

# EXHIBIT L

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION AT CINCINNATI  
4  
5 ---  
6 WALTER W. THIEMANN, on :  
7 behalf of himself and :  
8 of all others similarly :  
9 situated, :  
10 Plaintiff, :  
11 VS. : CASE NO. C-1-00793  
12 :  
13 OHSL FINANCIAL CORP., :  
14 OAK HILLS SAVINGS AND :  
15 LOAN COMPANY, F.A., :  
16 NORBERT G. BRINKER, :  
17 KENNETH L. HANAUER, :  
18 WILLIAM R. HILLEBRAND, :  
19 ALVIN E. HUCKE, THOMAS :  
20 E. MCKIERNAN, JOSEPH J. :  
21 TENOEVER, HOWARD N. :  
22 ZOELLNER, PROVIDENT :  
23 FINANCIAL GROUP, INC., :  
24 ROBERT L. HOVERSON, :  
25 JACK M. COOK, THOMAS D. :  
26 GROTE, JR., PHILIP R. :  
27 MYERS, JOSEPH A. PEDOTO, :  
28 JOSEPH A. STEGER, :  
29 CHRISTOPHER J. CARE, :  
30 CLIFFORD ROE, and :  
31 DINSMORE & SHOHL, LLP, :  
32 :  
33 Defendants. :  
34 ---  
35 Deposition of HOWARD ZOELLNER, a  
36 defendant herein, called by the plaintiff for  
37 cross-examination, pursuant to the Federal  
38 Rules of Civil Procedure, taken before me, Lee

1 Ann Williams, a Registered Professional  
2 Reporter and Notary Public in and for the State  
3 of Ohio, at the offices of Gene Mesh &  
4 Associates, 2605 Burnet Avenue, Cincinnati,  
5 Ohio 45219, on Monday, October 15, 2001, at  
6 10:10 a.m.  
7  
8 APPEARANCES:  
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35

1 STIPULATIONS  
2 It is stipulated by and among counsel for  
3 the respective parties that the deposition of  
4 HOWARD ZOELLNER, a defendant herein, called by  
5 the plaintiff for cross-examination pursuant to  
6 the Federal Rules of Civil Procedure, may be  
7 taken at this time by the notary; that said  
8 deposition may be reduced to writing in  
9 stenotypy by the notary, whose notes may then  
10 be transcribed out of the presence of the  
11 witness; and that proof of the official  
12 character and qualifications of the notary are  
13 expressly waived.  
14 ---  
15  
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35 (Zoellner Exhibits 12 through 15 were  
not retained by the Reporter.)  
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1 HOWARD ZOELLNER

2 having been first duly sworn, testified as  
3 follows:

4 CROSS-EXAMINATION

10:17:29 5 BY MR. BRAUTIGAM:

10:17:29 6 Q. Good morning, Mr. Zoellner.

10:17:32 7 A. Good morning.

10:17:32 8 Q. My name is Michael G. Brautigam  
10:17:34 9 and I represent Walter Thiemann and a certified  
10:17:37 10 class of OHSL shareholders.

10:17:40 11 A. Um-hmm.

10:17:40 12 Q. Mr. Zoellner, in your heart did  
10:17:42 13 you believe that the merger between Provident  
10:17:46 14 and OHSL was in the best interest of OHSL and  
10:17:48 15 its shareholders?

10:17:50 16 A. Yes.

10:17:51 17 Q. When did you come to believe that?

10:17:55 18 A. Oh, gee, I don't know the date. I  
10:17:58 19 don't know the date. At the beginning there I,  
10:18:01 20 I wasn't in favor of it, then I changed, which  
10:18:04 21 I think shows in the minutes when certain  
10:18:08 22 votes -- I can't tell you the date of that.  
10:18:12 23 It's been so long ago, I don't know.

10:18:16 24 Q. Mr. Zoellner, let me put in front  
10:18:20 25 of you what has been marked as Herron

10:18:22 1 Deposition Exhibit 2. Have you seen that  
10:18:25 2 document before?

10:18:30 3 A. I don't think so, no. This had to  
10:18:35 4 do with Herron. I can't tell what --

10:18:37 5 MR. BURKE: Herron Exhibit 2 is  
10:18:38 6 just where it was marked. The question -- this  
10:18:41 7 is a document with a bunch of handwriting on it  
10:18:43 8 and the question is, have you ever seen this  
10:18:45 9 document, if you remember.

10:18:46 10 A. No, I didn't.

10:18:49 11 Q. Okay. Have you ever seen this  
10:18:50 12 document without the handwriting?

10:18:51 13 MR. BURKE: Objection. Form.

10:18:54 14 A. I do not remember. I do not  
10:18:56 15 remember.

10:19:03 16 Q. Let me put in front of you  
10:19:04 17 Defendant's Exhibit 1. Have you ever seen that  
10:19:07 18 document?

10:19:10 19 A. I don't know. I don't know. It's  
10:19:11 20 been so long since any of this, I don't know  
10:19:14 21 what I have seen and what I haven't seen.

10:19:17 22 Q. Did you ever see the proxy  
10:19:19 23 materials?

10:19:20 24 A. Well, before I voted I guess those  
10:19:23 25 were -- they mailed that out to everybody to --

7

10:19:28 1 Q. Are you asking me or are you  
10:19:29 2 telling me?

10:19:30 3 A. I'm asking. Didn't they mail it  
10:19:32 4 out? The proxies they mailed out, I think.

10:19:34 5 Q. Mr. Zoellner, I get to ask the  
10:19:36 6 questions.

10:19:37 7 A. Oh, okay.

10:19:38 8 Q. And my question for you is, did  
10:19:39 9 you ever see the proxy materials, ever?

10:19:42 10 A. If you're referring to the proxy  
10:19:46 11 material they mailed out, yes, every -- every  
10:19:47 12 stockholder got one.

10:19:51 13 Q. Okay. Let me direct your  
10:19:52 14 attention to Herron Deposition Exhibit 2. Do  
10:19:55 15 you see that? Let me direct your attention to  
10:19:58 16 a particular sentence right here. "Your Board  
10:20:04 17 of Directors unanimously approved the  
10:20:05 18 acquisition and believes that it is in the best  
10:20:08 19 interest of OHSL stockholders." Did I read  
10:20:12 20 that correctly?

10:20:13 21 A. That's what it says there.

10:20:15 22 Q. Is that correct?

10:20:17 23 A. I don't know. I'd have to refer  
10:20:18 24 to the minutes to say whether it was unanimous  
10:20:20 25 or not, from --

8

10:20:23 1 Q. Was Ken Hanauer in favor of this  
10:20:25 2 transaction?

10:20:27 3 A. At the beginning, no, but later  
10:20:28 4 on, yes.

10:20:30 5 Q. Okay. When --

10:20:31 6 A. I don't know the date though.

10:20:32 7 Q. Okay. Let's mark this as Zoellner  
10:20:41 8 Deposition Exhibit 1. Mr. Zoellner, is it  
10:21:12 9 important that the proxy materials be truthful?

10:21:14 10 MR. BURKE: Objection, calls for a  
10:21:14 11 legal conclusion. If you know, you may answer.

10:21:17 12 A. Give me that again.

10:21:19 13 Q. Is it important that the proxy  
10:21:21 14 materials be truthful?

10:21:22 15 MR. BURKE: Same objection. You  
10:21:24 16 may answer.

10:21:24 17 A. Is it important that the proxy  
10:21:26 18 material what?

10:21:28 19 Q. Be --

10:21:29 20 A. I'm sorry, I'm deaf in this ear.

10:21:31 21 Q. All right. Would it be helpful if  
10:21:32 22 I speak toward your left ear?

10:21:34 23 A. Yeah.

10:21:37 24 Q. Okay. Is it important that the  
10:21:38 25 proxy materials be truthful?

10:21:41 1 MR. BURKE: You don't need to  
10:21:41 2 shout in his ear, just speak directly.

10:21:45 3 A. That's correct.

10:21:46 4 Q. Okay.

10:21:46 5 A. Yes. Everything should be  
10:21:47 6 truthful, yes.

10:21:49 7 Q. Okay. Do you believe that these  
10:21:50 8 proxy materials were truthful?

10:21:51 9 A. Well, I don't know. I haven't  
10:21:53 10 read these.

10:21:55 11 MR. BURKE: Do you want to refer  
10:21:56 12 to the ones that -- or do you know? See,  
10:22:00 13 you're referring to a document that he hasn't  
10:22:01 14 seen before with all sorts of handwriting on  
10:22:04 15 it.

10:22:04 16 MR. BRAUTIGAM: Actually I'm not,  
10:22:06 17 Jim, I'm referring him to Defendant's  
10:22:09 18 Exhibit --

10:22:09 19 MR. BURKE: Okay. That's fine  
10:22:10 20 then. All right. Do you remember the  
10:22:13 21 question, Howard?

10:22:15 22 A. Are these proxies truthful?

10:22:18 23 Q. Truthful, yes.

10:22:19 24 A. Truthful. I do not know. I  
10:22:20 25 haven't looked at these or read them.

11

10:23:27 1 before?

10:23:28 2 A. I -- not that I know of. I might  
10:23:32 3 have, but I don't remember if I --

10:23:36 4 Q. Okay. Do you read the Cincinnati  
10:23:37 5 Business Courier?

10:23:37 6 A. No.

10:23:38 7 Q. Have you ever read it?

10:23:40 8 MR. BURKE: Objection to  
10:23:40 9 relevance. You may answer.

10:23:46 10 A. I don't think I've ever subscribed  
10:23:48 11 to it or answered -- or saw it, but I know of  
10:23:52 12 it and I've seen it, but I didn't -- I don't  
10:23:56 13 have a subscription.

10:23:59 14 Q. Let me direct your attention to  
10:24:01 15 the last column over here. Do you see that?  
10:24:03 16 And there's a bullet point and it says,  
10:24:06 17 "Brautigam alleges." Do you see that at the  
10:24:08 18 very top?

10:24:09 19 A. Okay. Oak Hills had -- what was  
10:24:24 20 the question again?

10:24:25 21 Q. Okay. Do you see where it says,  
10:24:27 22 "Burke's response"?

10:24:30 23 A. "Burke's response, Hanauer opposed  
10:24:34 24 the Provident takeover because he wanted Oak  
10:24:37 25 Hills to remain independent. But he also

10:22:23 1 Q. Okay. Who would know?

10:22:25 2 MR. BURKE: Objection. Calls for  
10:22:27 3 speculation. You may answer.

10:22:28 4 A. Well, it would be -- it would be  
10:22:31 5 part of the minutes and that, that they would  
10:22:32 6 know. And Ken Hanauer would know because he  
10:22:36 7 was our managing officer.

10:22:38 8 Q. Okay. Let's take a look at what I  
10:22:40 9 had marked as Zoellner Deposition Exhibit 1 and  
10:22:42 10 I ask you to take a look at it. Now, Mr.  
10:22:44 11 Zoellner with respect to this document or any  
10:22:46 12 other, please take as much time as you need to  
10:22:48 13 read the document and familiarize yourself with  
10:22:50 14 it, okay? I believe in many cases I can direct  
10:22:53 15 your attention to specific parts, but you take  
10:22:56 16 as much time as you need.

10:23:00 17 MR. MOORE: We would object to the  
10:23:01 18 use of this document. It's a newspaper article  
10:23:06 19 which contains no direct statements prior to  
10:23:09 20 the filing of a lawsuit as irrelevant, but with  
10:23:12 21 that in mind -- the other thing is it's  
10:23:15 22 unverified, we don't know where it came from,  
10:23:22 23 what the date was, but -- it is hearsay, calls  
10:23:22 24 for hearsay. You may answer.

10:23:25 25 Q. Mr. Zoellner, have you seen this

12

10:24:41 1 believed the transaction was fair." I believe  
10:24:44 2 Ken Hanauer did want it to stay, because he --  
10:24:50 3 just as it says there.

10:24:53 4 Q. Okay. So you believe that Mr.  
10:24:54 5 Hanauer opposed the transaction --

10:24:56 6 A. At the beginning.

10:24:57 7 Q. -- correct?

10:24:57 8 MR. BURKE: Objection.  
10:24:57 9 Mischaracterizes the testimony. You're asking  
10:25:00 10 for speculation based upon a document he's  
10:25:02 11 never seen. Objection to form.

10:25:04 12 Q. Okay. Mr. Zoellner?

10:25:05 13 A. Yes.

10:25:05 14 Q. Do you believe that Mr. Hanauer  
10:25:06 15 opposed the Provident transaction?

10:25:08 16 MR. BURKE: Objection. Asked and  
10:25:09 17 answered. We're not going to do this all day.

10:25:12 18 MR. BRAUTIGAM: Jim, don't point  
10:25:13 19 your finger at me.

10:25:14 20 A. It's all according to what time  
10:25:16 21 you're talking about. At the beginning he, he  
10:25:19 22 wasn't in favor of it, but later on he was in  
10:25:23 23 favor of it.

10:25:24 24 Q. Okay. Why do you believe that Mr.  
10:25:25 25 Hanauer was in favor of the Provident-Oak Hills

13

14

10:25:28 1 merger later on?

10:25:29 2 A. I don't know. He just voted for

10:25:31 3 the merger.

10:25:34 4 Q. You're talking about as a

10:25:35 5 director, correct?

10:25:38 6 A. Hanauer as a director, yes.

10:25:41 7 Q. Okay. Do you know how --

10:25:42 8 A. Which should be in the minutes of

10:25:43 9 the, of the -- of Oak Hills.

10:25:45 10 Q. Right. We'll get there.

10:25:46 11 A. Okay.

10:25:47 12 Q. Do you know how Mr. Hanauer voted

10:25:48 13 his personal shares?

10:25:49 14 A. No, I do not.

10:25:50 15 Q. Okay. Would it surprise you if I

10:25:52 16 told you that he voted against the transaction?

10:25:54 17 MR. BURKE: Objection. Calls for

10:25:56 18 speculation as to what would surprise him.

10:25:59 19 A. I don't know.

10:25:59 20 Q. Okay. Do you think that that's

10:26:00 21 fair for Mr. Hanauer to vote one way as a

10:26:04 22 director and to vote the opposite way as a

10:26:06 23 shareholder?

10:26:07 24 MR. BURKE: Objection. Calls for

10:26:08 25 speculation. Ask Mr. Hanauer. You may answer.

10:26:13 1 A. That, that isn't a judgment for me

10:26:15 2 to make, I don't think. You'd have to ask

10:26:18 3 Hanauer.

10:26:19 4 Q. Can you answer my question, Mr.

10:26:21 5 Zoellner?

10:26:21 6 A. All right.

10:26:22 7 MR. BURKE: He just did.

10:26:28 8 Q. Do you think that it was fair for

10:26:30 9 Mr. Hanauer to vote one way as a director and

10:26:33 10 vote another way as a shareholder?

10:26:35 11 MR. BURKE: Objection. Asked and

10:26:36 12 answered.

10:26:37 13 A. Well, he has a right to do

10:26:40 14 whatever he wants to do. I really should not

10:26:43 15 be a judge of whether he's doing what he should

10:26:45 16 or he shouldn't do.

10:26:46 17 Q. Do you consider yourself to be a

10:26:47 18 fair man?

10:26:48 19 A. I hope so.

10:26:49 20 Q. Do you think that what Mr. Hanauer

10:26:51 21 did was fair?

10:26:53 22 MR. BURKE: Objection. Asked and

10:26:54 23 answered.

10:26:54 24 A. I do not know whether he did that

10:26:55 25 or not. This was written, you said, in the

15

16

10:27:03 1 paper -- the --

10:27:08 2 Q. Cincinnati Business Courier.

10:27:09 3 A. Cincinnati Business Courier.

10:27:10 4 Q. All right.

10:27:11 5 A. And I don't know whether that's

10:27:12 6 true or false.

10:27:13 7 Q. Okay.

10:27:15 8 A. And as I said before, Ken has a

10:27:17 9 right to do what -- you and I shouldn't be

10:27:20 10 telling him what to do.

10:27:22 11 Q. Okay. Let me ask you a different

10:27:23 12 question. Do you have Zoellner Deposition

10:27:25 13 Exhibit 1 in front of you? Okay?

10:27:27 14 A. All right.

10:27:28 15 Q. "Burke's response: Hanauer

10:27:29 16 opposed the Provident takeover because he

10:27:33 17 wanted Oak Hills to remain independent." Did I

10:27:36 18 read that correctly?

10:27:38 19 A. I -- yes. I understand that.

10:27:41 20 Q. Okay. Is that true?

10:27:42 21 MR. BURKE: Objection. Asked and

10:27:43 22 answered. He's already answered this three

10:27:45 23 times, Mike. And we're not going to do this,

10:27:48 24 not again. Go ahead, Mr. Zoellner. You can do

10:27:51 25 it again. Do you understand the question?

10:27:58 1 A. Does Ken Hanauer have a right

10:28:00 2 to --

10:28:01 3 Q. No, that's not the question, Mr.

10:28:02 4 Zoellner.

10:28:03 5 A. All right.

10:28:19 6 MR. BRAUTIGAM: Read that question

10:28:19 7 back.

10:28:19 8 (Record read by Reporter.)

10:28:21 9 MR. BURKE: Objection,

10:28:21 10 speculation. This is an unverified document,

10:28:23 11 calls for hearsay. You may answer.

10:28:24 12 A. I do not know if that was true or

10:28:26 13 not. Whether he voted one way or -- I never

10:28:31 14 checked the voting of anybody, so I don't know

10:28:35 15 whether that's true or false that he voted one

10:28:38 16 way or -- and another way.

10:28:41 17 Q. Okay. If Mr. Hanauer voted his

10:28:43 18 personal shares against the transaction --

10:28:47 19 A. Um-hmm.

10:28:47 20 Q. -- would you have a problem with

10:28:48 21 the proxy materials?

10:28:49 22 MR. BURKE: Objection. Calls for

10:28:50 23 speculation. You may answer.

10:28:56 24 A. If Mr. Hanauer did what?

10:29:04 25 Q. If Mr. Hanauer voted his personal

17

10:29:04 1 shares against the Provident-Oak Hills merger,  
10:29:05 2 would you have a problem with these proxy  
10:29:08 3 materials?

10:29:09 4 MR. BURKE: Objection. Calls for  
10:29:10 5 speculation. You may answer.

10:29:13 6 A. Well, I'd have to read these proxy  
10:29:16 7 materials to see if he did that, right? I mean  
10:29:19 8 I -- does the proxy material say that he voted  
10:29:24 9 that way?

10:29:25 10 Q. Mr. Zoellner, I'll show you some  
10:29:28 11 information later.

10:29:29 12 A. Okay.

10:29:29 13 Q. Mr. Hanauer's testimony indicates  
10:29:30 14 that he voted against the transaction with  
10:29:34 15 respect to his personal shares, okay?

10:29:36 16 A. Um-hmm.

10:29:38 17 Q. Assume for the sake of this  
10:29:39 18 question that that is, in fact, true, okay? If  
10:29:44 19 that's true, do you have a problem with these  
10:29:46 20 proxy materials?

10:29:47 21 MR. BURKE: Objection. Calls for  
10:29:48 22 speculation, asked and answered. You may  
10:29:51 23 answer. Do you understand the question,  
10:30:00 24 Howard?

10:30:07 25 A. No. I, I -- give me the question

19

10:32:02 1 please?

10:32:13 2 MR. BURKE: Do you want him to  
10:32:13 3 review this before he turns to page 25?

10:32:16 4 MR. BRAUTIGAM: No, I can direct  
10:32:17 5 his attention to it.

10:32:19 6 MR. BURKE: Okay. Page 25 is up  
10:32:20 7 there at the top left, Howard.

10:32:20 8 BY MR. BRAUTIGAM:

10:32:23 9 Q. Okay. Mr. Zoellner, do you  
10:32:23 10 understand what Zoellner Deposition Exhibit 2  
10:32:26 11 is?

10:32:27 12 A. No.

10:32:27 13 Q. Okay. Let me represent to you  
10:32:28 14 that this is the deposition testimony as  
10:32:31 15 transcribed that Mr. Hanauer gave, okay? Are  
10:32:35 16 you with me so far?

10:32:36 17 A. This is what Hanauer gave, okay.

10:32:43 18 Q. And this is testimony that he gave  
10:32:45 19 under oath, okay? And it's a deposition  
10:32:47 20 procedure just like this one. Do you  
10:32:49 21 understand that?

10:32:50 22 A. Um-hmm.

10:32:51 23 Q. Okay. Now, please look at page  
10:32:52 24 nine -- excuse me, line nine on page 25.

10:32:58 25 MR. BURKE: Objection. Calls for

18

10:30:09 1 again.

10:30:36 2 MR. BRAUTIGAM: Read back the  
10:30:37 3 question.

10:30:37 4 (Record read by Reporter.)

10:30:38 5 A. No, I have no trouble with it.

10:31:18 6 Q. Okay. Mr. Zoellner, I'm handing  
10:31:20 7 you what has been marked as Zoellner Deposition  
10:31:22 8 Exhibit 2. I'd like you to take a look at it.  
10:31:24 9 I'd like to direct your attention to page five.  
10:31:26 10 This is the testimony of Ken Hanauer. It's the  
10:31:29 11 entire four sessions.

10:31:31 12 MR. BURKE: For the record, I will  
10:31:32 13 note that this is an 800 page document -- no,  
10:31:36 14 more than that -- an 810 page document that  
10:31:43 15 this witness, to the best of my knowledge, has  
10:31:44 16 never seen before. And I object to you just  
10:31:47 17 sort of throwing that in front of him and  
10:31:50 18 attempting to question him about something. It  
10:31:52 19 calls for speculation, it's an improper  
10:31:54 20 question. You may answer.

10:31:55 21 MR. MOORE: I'll join the  
10:31:56 22 objection.

10:31:57 23 A. I, I've never seen that. I don't  
10:32:00 24 know.

10:32:00 25 Q. Okay. Can you turn to page 25,

20

10:32:59 1 complete speculation. He's never seen this  
10:33:01 2 document before, calls for hearsay. You may  
10:33:03 3 answer.

10:33:04 4 MR. BRAUTIGAM: I just told him to  
10:33:06 5 look at line nine.

10:33:08 6 A. You said number nine?

10:33:08 7 BY MR. BRAUTIGAM:

10:33:10 8 Q. Line nine, yes.

10:33:15 9 A. I don't even know what that means.

10:33:17 10 Q. Okay. Well, let me read it out  
10:33:19 11 loud, okay? The question that I asked Mr.  
10:33:21 12 Hanauer is this:

10:33:22 13 Question: If I understood your  
10:33:24 14 testimony correctly a minute ago, you said that  
10:33:26 15 you did not believe that this transaction was  
10:33:27 16 in the best interest of Oak Hills stockholders,  
10:33:31 17 correct?

10:33:32 18 Answer -- this is by Mr. Hanauer:  
10:33:34 19 In -- yeah, that was your question. Yes,  
10:33:37 20 that's what I said.

10:33:38 21 Question: Then did it bother you  
10:33:40 22 that this document was going out, saying the  
10:33:43 23 opposite of what you felt, what you believed?

10:33:47 24 Answer -- this is Mr. Hanauer  
10:33:48 25 again: I did not dwell on the second piece of



21

22

10:33:51 1 that, of that sentence. Couched the way you've  
 10:33:55 2 just worked it through -- you've just worked  
 10:33:57 3 through it, I don't care for that piece of the  
 10:33:59 4 document, but I did not dwell on, on beliefs  
 10:34:02 5 that it -- at that point, you know, it doesn't  
 10:34:05 6 say unanimous there. If we're getting down to,  
 10:34:09 7 you know, we unanimously approved, but it's a  
 10:34:11 8 true statement that the Board believed. It was  
 10:34:13 9 not the whole Board that believed that.

10:34:16 10 Okay. Did I read that directly?

10:34:19 11 MR. BURKE: Objection.

10:34:19 12 A. Well, I don't know whether he did  
 10:34:20 13 or not.

10:34:21 14 Q. You weren't able to follow when I  
 10:34:23 15 was reading?

10:34:24 16 A. Well, I followed part of it, but I  
 10:34:25 17 don't know whether that's correct.

10:34:27 18 Q. Okay. Well, you have it in front  
 10:34:28 19 of you though, too.

10:34:31 20 MR. BURKE: Objection. It's an  
 10:34:32 21 800 page document that this witness has never  
 10:34:34 22 seen before and you just ran over several  
 10:34:36 23 pages. It's also four pages of transcript per  
 10:34:39 24 page. And you're taking stuff out of context  
 10:34:42 25 and attempting to draw speculative testimony

10:34:45 1 out of this witness and I object.

10:34:47 2 MR. BRAUTIGAM: Jim, we really  
 10:34:48 3 don't need speaking objections, we're doing  
 10:34:50 4 fine.

10:34:50 5 BY MR. BRAUTIGAM:

10:34:51 6 Q. Okay. Mr. Zoellner, do the  
 10:34:53 7 questions and answers that I've read appear to  
 10:34:55 8 you to suggest that Mr. Hanauer did not believe  
 10:34:59 9 that this transaction was in the best interest  
 10:35:01 10 of Oak Hills and its stockholders?

10:35:04 11 MR. BURKE: Objection.

10:35:04 12 MR. MOORE: Objection.

10:35:05 13 MR. BURKE: Mischaracterizes the  
 10:35:06 14 document. Calls for complete speculation.  
 10:35:09 15 Takes the statements out of context. You may  
 10:35:11 16 answer.

10:35:16 17 A. I do not know. I do not know.

10:35:16 18 Q. You have no opinion on Mr.  
 10:35:16 19 Hanauer's testimony?

10:35:16 20 MR. BURKE: Objection. Asked and  
 10:35:18 21 answered.

10:35:19 22 A. I, I have no opinion on his  
 10:35:24 23 objection. I'm not familiar with what he said  
 10:35:26 24 or what he didn't say. I have no comment on  
 10:35:31 25 it.

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10:35:33 1 Q. Mr. Zoellner, with all due  
 10:35:35 2 respect, this is not a press conference and "no  
 10:35:37 3 comment" is not an appropriate response.

10:35:39 4 MR. BURKE: Oh, yes, it is, Mr.  
 10:35:40 5 Brautigam. If that's his answer, that's his  
 10:35:42 6 answer.

10:35:43 7 MR. BRAUTIGAM: Jim, we don't need  
 10:35:45 8 speaking objections and I disagree.

10:35:46 9 BY MR. BRAUTIGAM:

10:35:47 10 Q. Mr. Zoellner, I'm entitled to  
 10:35:49 11 answers to my questions for the most part.

10:35:52 12 A. I'm trying to answer the best I  
 10:35:53 13 can. I'm trying to tell you the truth and it's  
 10:35:56 14 the truth, I don't understand it.

10:35:57 15 Q. Mr. Zoellner, do you consider this  
 10:35:59 16 deposition important?

10:36:06 17 A. Do I consider it important?

10:36:13 18 MR. BURKE: Objection to form.  
 10:36:14 19 You may answer.

10:36:21 20 A. I guess I'd say yes on that.

10:36:24 21 Q. Okay. What, if anything, did you  
 10:36:24 22 do to prepare for this deposition?

10:36:30 23 A. Well, I talked to the -- Mr. Burke  
 10:36:34 24 for a few minutes about the extent of --

10:36:38 25 MR. BURKE: Don't say what we

10:36:39 1 talked about.

10:36:40 2 A. No, okay.

10:36:41 3 MR. BURKE: That's privileged.

10:36:43 4 A. I just talked with him about it.  
 10:36:44 5 I didn't do anything else other than -- oh,  
 10:36:46 6 that one you sent me, that --

10:36:51 7 MR. BURKE: Well, don't say what I  
 10:36:52 8 sent you or what we talked about.

10:36:54 9 A. Okay.

10:36:55 10 MR. BURKE: I instruct you not to  
 10:36:55 11 answer that.

10:36:56 12 A. Okay.

10:36:58 13 Q. Mr. Zoellner, did you review any  
 10:36:59 14 documents?

10:37:00 15 MR. BURKE: Objection. As I  
 10:37:01 16 recall, that was off limits for Mr. Herron.  
 10:37:03 17 Same objection, same instruction. Don't answer  
 10:37:05 18 it.

10:37:09 19 MR. BRAUTIGAM: Did he review any  
 10:37:10 20 documents at all?

10:37:11 21 MR. BURKE: As I recall, your  
 10:37:12 22 instruction to Mr. Herron -- we can pull out  
 10:37:14 23 the transcript.

10:37:15 24 MR. BRAUTIGAM: Well, Jim, that's  
 10:37:16 25 not --

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10:37:17 1 MR. BURKE: You refused to let Mr.  
 10:37:19 2 Herron talk about the documents that you sent  
 10:37:21 3 to him. Am I correct or am I incorrect?

10:37:23 4 MR. BRAUTIGAM: You're incorrect.  
 10:37:23 5 BY MR. BRAUTIGAM:

10:37:24 6 Q. Mr. Zoellner, have you read any  
 10:37:26 7 documents related to this case?

10:37:29 8 MR. BURKE: Ever?

10:37:30 9 Q. Ever.

10:37:31 10 MR. BURKE: You can answer, Mr.  
 10:37:32 11 Zoellner.

10:37:33 12 A. Any documents -- no, I -- I guess  
 10:37:38 13 there's some documents like the minutes and the  
 10:37:42 14 Board meetings and stuff, I guess those were  
 10:37:46 15 read every, every time we had a meeting.

10:37:49 16 Q. Mr. Zoellner, what is your  
 10:37:50 17 understanding of the litigation so far?

10:37:55 18 MR. BURKE: Objection. Calls for  
 10:37:56 19 a legal conclusion, form.

10:38:00 20 A. Give me that again.

10:38:02 21 Q. What is your understanding of the  
 10:38:04 22 litigation?

10:38:04 23 A. What's my understanding of it? I  
 10:38:09 24 don't know. Just that Walt Thiemann has filed  
 10:38:12 25 a claim against Oak Hills. That's about all I

10:38:17 1 know about it.

10:38:33 2 Q. Okay. Do you know if you're being  
 10:38:33 3 sued personally?

10:38:33 4 A. I really do not know that for  
 10:38:33 5 sure.

10:38:33 6 Q. Okay.

10:38:33 7 A. It's important that -- I guess --  
 10:38:33 8 I think I did hear something in a discussion  
 10:38:35 9 that the insurance company is representing the  
 10:38:38 10 directors. That -- I think that's true, I  
 10:38:41 11 don't know for sure.

10:38:42 12 Q. Which directors are you talking  
 10:38:43 13 about?

10:38:45 14 A. The directors of Oak Hills Savings  
 10:38:47 15 & Loan.

10:38:48 16 Q. Okay. And which insurance company  
 10:38:49 17 are you talking about?

10:38:50 18 A. I do not know which insurance  
 10:38:52 19 company it's with.

10:38:54 20 Q. Okay. I see Mr. Burke is sitting  
 10:38:55 21 on your left. Who is Mr. Burke with respect to  
 10:38:57 22 this litigation?

10:38:59 23 A. He's the attorney that's  
 10:39:00 24 representing us.

10:39:01 25 Q. Okay. Is Mr. Burke representing

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10:39:03 1 anyone else other than the Oak Hills directors?

10:39:05 2 A. I do not know that.

10:39:07 3 Q. Okay. Did you do anything to  
 10:39:10 4 determine whether or not Mr. Burke has a  
 10:39:12 5 conflict of interest in representing you?

10:39:15 6 MR. BURKE: Objection --

10:39:16 7 A. I do not know.

10:39:17 8 MR. BURKE: -- to form, calls for  
 10:39:18 9 speculation.

10:39:18 10 A. I do not know that.

10:39:20 11 Q. Did you do anything to check?

10:39:22 12 A. No, I haven't checked anything.  
 10:39:23 13 There's nothing to check.

10:39:31 14 Q. Is it your testimony that at no  
 10:39:33 15 time did you ever read the proxy materials?

10:39:36 16 MR. BURKE: Objection. Misstates  
 10:39:36 17 the record. Asked and answered. You can  
 10:39:38 18 answer it.

10:39:40 19 A. I read the proxy material that  
 10:39:43 20 they mailed out with the, the ballots to vote.  
 10:39:47 21 That's the only proxy material that I've read.

10:39:50 22 Q. Okay. And you read the proxy  
 10:39:51 23 materials that you received in the mail; is  
 10:39:54 24 that right?

10:39:54 25 A. Yeah.

10:39:55 1 Q. Did you read every word and look  
 10:39:56 2 at every number?

10:39:57 3 A. I do not know that. It's been so  
 10:40:00 4 long ago, I couldn't even tell you what it  
 10:40:02 5 said.

10:40:07 6 Q. Okay. Do you believe that the  
 10:40:08 7 proxy materials disclosed the resignation of  
 10:40:12 8 Director Tom Herron?

10:40:14 9 MR. BURKE: Objection. Calls for  
 10:40:16 10 speculation. You may answer.

10:40:21 11 A. I don't even know whether he was a  
 10:40:22 12 director at the time that went out. I, I  
 10:40:26 13 wouldn't be able to answer that. I don't -- I  
 10:40:28 14 don't know the timing on that.

10:40:34 15 Q. Okay. Do you know when Mr. Herron  
 10:40:35 16 resigned?

10:40:36 17 A. Do not know the date.

10:40:40 18 Q. Okay. Let's take a look at this.  
 10:40:41 19 This is Herron Deposition Exhibit 3, and I ask  
 10:40:46 20 you to take a look at it. Have you seen that  
 10:40:51 21 document before?

10:40:52 22 MR. BURKE: May he have a chance  
 10:40:53 23 to read it first?

10:40:55 24 MR. BRAUTIGAM: Absolutely. Jim,  
 10:40:55 25 as I've already said --



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10:41:03 1 MR. BURKE: While we're --  
 10:41:03 2 MR. BRAUTIGAM: Jim, I don't want  
 10:41:03 3 any comments.  
 10:41:03 4 MR. BURKE: No, no, no. While Mr.  
 10:41:06 5 Zoellner is reading that, Mike, I do want to  
 10:41:06 6 refer you specifically to pages 167 and 168 of  
 10:41:10 7 Mr. Herron's deposition, which when I asked him  
 10:41:12 8 which documents you had sent him to review for  
 10:41:15 9 his deposition, you instructed him not to  
 10:41:17 10 answer.  
 10:41:18 11 MR. BRAUTIGAM: Jim, it was a  
 10:41:19 12 different question. I'm not going to debate  
 10:41:21 13 this now.  
 10:41:22 14 MR. BURKE: Okay.  
 10:41:37 15 A. I'm familiar with this. I don't  
 10:41:38 16 know whether it's identical or not, but he did  
 10:41:41 17 send me a letter of his resignation to the  
 10:41:45 18 Board.  
 10:41:45 19 BY MR. BRAUTIGAM:  
 10:41:45 20 Q. And does this --  
 10:41:46 21 A. But I don't know whether it's the  
 10:41:47 22 same one that I'm reading here.  
 10:41:49 23 Q. Does this refresh your  
 10:41:51 24 recollection with respect to the date that Mr.  
 10:41:52 25 Herron submitted his letter of resignation?

10:41:55 1 A. No, I have no idea of the date  
 10:41:56 2 that --  
 10:41:57 3 Q. Does it state the date of July  
 10:41:59 4 27th, 1999 in the letter?  
 10:42:02 5 MR. BURKE: Objection. The  
 10:42:02 6 document speaks for itself. You may answer it.  
 10:42:05 7 A. I do not know without looking at  
 10:42:06 8 the document what date it was, whether it was  
 10:42:08 9 the 27th or what.  
 10:42:13 10 Q. Okay. Do you remember after Mr.  
 10:42:16 11 Herron resigned, which I will represent to you  
 10:42:18 12 was July 27th, 1999, effective July 30th, Mr.  
 10:42:22 13 Herron called you that night; is that correct?  
 10:42:26 14 A. I believe that is true.  
 10:42:27 15 Q. And you had a discussion with him  
 10:42:30 16 with respect to Mr. Herron's resignation,  
 10:42:33 17 correct?  
 10:42:35 18 A. Herron's the one that called me.  
 10:42:36 19 Q. Correct. And you discussed his  
 10:42:40 20 resignation, correct?  
 10:42:41 21 A. Yes. I, I asked him not to  
 10:42:43 22 resign.  
 10:42:44 23 Q. Okay. Why did you ask him not to  
 10:42:45 24 resign?  
 10:42:46 25 A. Because he's a Board member and I

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10:42:48 1 have -- we're still friends and I wanted him to  
 10:42:50 2 stay.  
 10:42:51 3 Q. Why did you want him to stay?  
 10:42:53 4 A. Because I liked him.  
 10:42:54 5 Q. Okay.  
 10:42:54 6 A. And he -- I --  
 10:42:57 7 MR. BURKE: Wait. Finish your  
 10:42:58 8 answer, Mr. Zoellner.  
 10:42:59 9 MR. BRAUTIGAM: I thought he was  
 10:43:00 10 finished.  
 10:43:00 11 MR. BURKE: Go ahead.  
 10:43:01 12 A. I liked him and he did -- he has  
 10:43:03 13 always done a good job. And I, I didn't see  
 10:43:06 14 any reason why he should, but that was his  
 10:43:09 15 decision.  
 10:43:10 16 Q. Now, Mr. Herron was not in favor  
 10:43:13 17 of this proposed merger, correct?  
 10:43:17 18 A. Well, it's all according to what  
 10:43:19 19 time. At one time he wasn't, but another time  
 10:43:22 20 he was.  
 10:43:22 21 Q. When was Mr. Herron in favor of  
 10:43:25 22 this transaction?  
 10:43:27 23 A. Oh, I'm sorry, you said Herron  
 10:43:29 24 or --  
 10:43:30 25 Q. Yes, Herron.

10:43:31 1 A. -- or Hanauer?  
 10:43:33 2 Q. No, we're talking about Herron,  
 10:43:35 3 Tom Herron.  
 10:43:36 4 A. Herron.  
 10:43:36 5 MR. BURKE: Wait a minute. Mr.  
 10:43:37 6 Brautigam, please stop shouting at my witness.  
 10:43:41 7 Keep your voice down.  
 10:43:42 8 MR. BRAUTIGAM: You're the one  
 10:43:44 9 that said he had a hearing problem.  
 10:43:47 10 MR. BURKE: You don't need to  
 10:43:48 11 yell.  
 10:43:49 12 A. You don't need to yell.  
 10:43:51 13 Q. I'll speak in a normal tone of  
 10:43:53 14 voice.  
 10:43:54 15 A. No, just as long as I keep my ear  
 10:43:56 16 this way, we're in good shape. This one is a  
 10:43:59 17 hundred percent good; this one is a hundred  
 10:44:02 18 percent bad.  
 10:44:03 19 Q. You tell me how I need to speak.  
 10:44:05 20 A. Okay.  
 10:44:05 21 Q. Was Mr. Herron ever in favor of  
 10:44:07 22 this transaction?  
 10:44:09 23 A. I do not know.  
 10:44:11 24 Q. Okay. Did he ever vote in favor  
 10:44:13 25 of a proposed merger?

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10:44:14 1 A. I do not know.  
 10:44:16 2 Q. Okay. Did he tell you in this  
 10:44:17 3 phone call that he resigned in part because of  
 10:44:19 4 his opposition to the transaction?  
 10:44:21 5 A. No, not that I remember.  
 10:44:23 6 Q. Did you ever tell him that his  
 10:44:25 7 resigning was the honorable thing?  
 10:44:27 8 A. No, no, because I wanted him to  
 10:44:31 9 stay.  
 10:44:32 10 Q. Did you believe that what Mr.  
 10:44:34 11 Herron was doing, even though you wanted him to  
 10:44:38 12 stay, in resigning was honorable?  
 10:44:41 13 MR. BURKE: Objection to form.  
 10:44:42 14 Calls for speculation.  
 10:44:44 15 A. Well, I don't know. I do not  
 10:44:47 16 know. When you say was it honorable or not,  
 10:44:50 17 that's in a matter of my opinion.  
 10:44:52 18 Q. What is your opinion?  
 10:44:54 19 A. That he had the right to do what  
 10:44:55 20 he wanted to do.  
 10:44:57 21 Q. My question is a little different.  
 10:44:59 22 Do you believe that Mr. Herron resigning in  
 10:45:01 23 part in protest because he did not believe that  
 10:45:05 24 the merger of Oak Hills and Provident was in  
 10:45:08 25 the best interest of Oak Hills and its

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10:46:11 1 again. Calls for speculation.  
 10:46:17 2 A. As far as my thinking, he's  
 10:46:21 3 entitled to do what he wants to do, so it --  
 10:46:25 4 whatever, if he wanted to stay or leave. I  
 10:46:27 5 just wanted him to stay, but it's honorable in  
 10:46:30 6 his mind whether he -- whatever he does.  
 10:46:35 7 Q. Okay. Mr. Zoellner, are you  
 10:46:37 8 receiving any money from Provident?  
 10:46:39 9 A. Yes.  
 10:46:39 10 Q. How much are you receiving?  
 10:46:41 11 A. \$900.  
 10:46:42 12 Q. Per month?  
 10:46:43 13 A. Per month.  
 10:46:43 14 Q. And how long have you been  
 10:46:45 15 receiving that?  
 10:46:51 16 A. Probably a year and what -- let's  
 10:46:58 17 see here, I don't -- somewhere around a year or  
 10:47:02 18 year and eight months, something like that.  
 10:47:04 19 Q. And what do you do -- I didn't  
 10:47:07 20 mean to interrupt you. Are you finished?  
 10:47:09 21 A. Yes.  
 10:47:10 22 Q. Okay. What do you do for that  
 10:47:11 23 money?  
 10:47:11 24 A. What do we do for that money?  
 10:47:13 25 Q. What do you do for that money?

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10:45:09 1 shareholders was honorable?  
 10:45:11 2 MR. BURKE: Objection. Misstates  
 10:45:12 3 the record, assumes facts not in evidence and  
 10:45:15 4 mischaracterizes this witness' prior testimony.  
 10:45:18 5 A. I do not know whether he thought  
 10:45:19 6 it was honorable or not honorable or --  
 10:45:23 7 Q. Mr. Zoellner, time out.  
 10:45:24 8 A. Yeah.  
 10:45:24 9 Q. I'm not asking what Mr. Herron  
 10:45:26 10 thought. I'm asking what you thought. When  
 10:45:29 11 Mr. Herron called you on July 27th, 1999, after  
 10:45:33 12 he had formally submitted his resignation to  
 10:45:36 13 Mr. Brinker, did you believe that the steps he  
 10:45:39 14 was taking were honorable?  
 10:45:42 15 MR. BURKE: Objection. Asked and  
 10:45:43 16 answered.  
 10:45:44 17 A. Well, I -- I did not know what  
 10:45:48 18 steps he was taking. He only did one thing and  
 10:45:55 19 he resigned. We tried to have him rescind that  
 10:45:57 20 and stay on because we -- at least I did, I  
 10:46:00 21 liked Tom.  
 10:46:03 22 Q. Okay. Do you believe that Mr.  
 10:46:04 23 Herron's resignation was honorable?  
 10:46:07 24 MR. BURKE: Objection. Asked and  
 10:46:08 25 answered now three times. You may answer

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10:47:15 1 A. What do I do? We have a meeting  
 10:47:17 2 once a month of the old directors and discuss  
 10:47:20 3 different things about how we could help  
 10:47:22 4 Provident.  
 10:47:23 5 Q. Okay. And --  
 10:47:25 6 A. And then how -- what's going on  
 10:47:26 7 and stuff.  
 10:47:27 8 Q. Okay. Did Provident ask you to do  
 10:47:31 9 that?  
 10:47:32 10 A. Ask us to meet?  
 10:47:34 11 Q. Yes.  
 10:47:34 12 A. No, they didn't, not that I know  
 10:47:36 13 of. They might have, but --  
 10:47:40 14 Q. Is it your --  
 10:47:41 15 MR. BURKE: Please let the witness  
 10:47:42 16 finish.  
 10:47:43 17 MR. BRAUTIGAM: Jim, I thought he  
 10:47:44 18 was finished.  
 10:47:45 19 MR. BURKE: When he's still  
 10:47:45 20 talking, that usually means that he's not.  
 10:47:49 21 MR. BRAUTIGAM: Mr. Zoellner --  
 10:47:51 22 MR. BURKE: Go back, reread the  
 10:47:52 23 question and as much of the answer as you have  
 10:47:55 24 so the witness can understand where he was.  
 10:47:55 25 (Record read by Reporter.)

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10:48:23 1 A. No, I don't remember saying they  
 10:48:26 2 might have asked us, I -- they didn't ask us to  
 10:48:29 3 do that. That's what I answered the first time  
 10:48:32 4 there, and I don't remember answering that  
 10:48:34 5 second time.  
 10:48:37 6 Q. Mr. Zoellner, does your receipt of  
 10:48:39 7 900 per month from Provident have anything to  
 10:48:42 8 do with these meetings?  
 10:48:51 9 A. Well, not, not formally. I --  
 10:48:56 10 Q. Are you finished with your answer?  
 10:48:58 11 A. Let me think about that. Does it  
 10:49:02 12 have anything to do with our meetings that we  
 10:49:06 13 have? I, I would say yes, we try to help  
 10:49:13 14 Provident as much as we can.  
 10:49:15 15 Q. Okay. How do you try to help  
 10:49:16 16 Provident?  
 10:49:17 17 A. By spreading the good word about  
 10:49:19 18 Provident and --  
 10:49:21 19 Q. What is the --  
 10:49:22 20 A. -- and, and talk to customers  
 10:49:23 21 that -- of Oak Hills and tell them how -- to  
 10:49:27 22 stay with Provident and work with Provident.  
 10:49:30 23 Q. Did Provident ask you to do that?  
 10:49:32 24 A. No.  
 10:49:35 25 Q. Okay. Let's talk about these

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10:50:44 1 A. Oh, I -- no, no.  
 10:50:46 2 Q. Okay. Have you ever talked about  
 10:50:47 3 litigation at these meetings?  
 10:50:55 4 A. In what form?  
 10:50:56 5 Q. In any form.  
 10:50:57 6 A. In any form. Litigation about  
 10:51:00 7 who's suing who and that that's brought up,  
 10:51:03 8 like this with Walt Thiemann?  
 10:51:03 9 Q. Yes.  
 10:51:06 10 A. That --  
 10:51:09 11 Q. That is a topic of discussion at  
 10:51:10 12 these meetings?  
 10:51:12 13 A. Yes.  
 10:51:12 14 Q. All right. Please tell me with as  
 10:51:14 15 much specificity as possible, who said what  
 10:51:17 16 with respect to the Thiemann litigation.  
 10:51:19 17 MR. BURKE: Objection to breadth.  
 10:51:20 18 Overbroad, vague.  
 10:51:21 19 A. Oh, it's just a matter of a  
 10:51:23 20 discussion. I couldn't tell you what, what  
 10:51:25 21 we've said or what we didn't say.  
 10:51:28 22 Q. Can you tell me the substance of  
 10:51:30 23 these discussions?  
 10:51:31 24 A. No, just a little -- there's no --  
 10:51:34 25 how this is going on, whether --

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10:49:36 1 meetings. How long have you been having these  
 10:49:38 2 meetings with the other directors?  
 10:49:41 3 A. We have them once a month.  
 10:49:43 4 Q. Okay. And who typically attends?  
 10:49:45 5 A. There's Norb Brinker, Al Hucke,  
 10:49:54 6 Bill Hillebrand, Tom McKiernan, Joe Tenover,  
 10:50:05 7 and myself.  
 10:50:10 8 Q. Okay. Tom Herron doesn't attend  
 10:50:11 9 these meetings, correct?  
 10:50:13 10 A. No.  
 10:50:17 11 Q. Okay. Ken Hanauer doesn't attend  
 10:50:19 12 these meetings, either?  
 10:50:20 13 A. No.  
 10:50:20 14 Q. And how long have these meetings  
 10:50:23 15 been going on?  
 10:50:27 16 A. Gee, I don't know.  
 10:50:28 17 Q. Since the merger?  
 10:50:30 18 A. Yeah, oh, after the merger.  
 10:50:33 19 Q. Okay. Where do you have these  
 10:50:34 20 meetings?  
 10:50:35 21 A. Various places for lunch.  
 10:50:37 22 Q. Okay. And have you ever had one  
 10:50:40 23 of your attorneys at these meetings?  
 10:50:43 24 A. No.  
 10:50:44 25 Q. Okay.

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10:51:37 1 Q. Okay. Are you aware of any orders  
 10:51:39 2 in this case that have been issued?  
 10:51:42 3 A. Any orders? No, I don't know  
 10:51:48 4 personally of any.  
 10:51:50 5 Q. Have you ever asked anybody?  
 10:51:53 6 A. No.  
 10:51:55 7 Q. Do you have an understanding as to  
 10:51:57 8 whether your personal assets could be at risk?  
 10:52:00 9 MR. BURKE: Objection. Calls for  
 10:52:01 10 speculation, legal conclusion. You may answer.  
 10:52:08 11 A. I -- what -- do I have any worry  
 10:52:12 12 about my assets being -- is that what the  
 10:52:15 13 question was?  
 10:52:16 14 Q. Do you have any understanding as  
 10:52:17 15 to whether or not your personal assets could be  
 10:52:20 16 at risk?  
 10:52:22 17 A. Have any understanding. Oh, I, I  
 10:52:29 18 guess it is. At any time any investment could  
 10:52:33 19 be at risk.  
 10:52:39 20 Q. Do you consider the Thiemann suit  
 10:52:39 21 to be an investment made by you?  
 10:52:39 22 MR. BURKE: Objection.  
 10:52:40 23 Argumentative.  
 10:52:40 24 A. No. It didn't have nothing -- his  
 10:52:42 25 suit had nothing to do with me, I don't think.

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10:52:47 1 Q. Do you know if you're a defendant  
 10:52:48 2 in Mr. Thiemann's lawsuit?  
 10:52:50 3 MR. BURKE: Objection. Asked and  
 10:52:51 4 answered.  
 10:52:53 5 A. I think it's -- I've been told by  
 10:52:55 6 the attorneys that we were. Not necessarily  
 10:52:59 7 Mr. Burke, but there's been other attorneys on  
 10:53:04 8 this that I think we've talked --  
 10:53:06 9 MR. BURKE: Don't tell anybody  
 10:53:07 10 what the attorneys said.  
 10:53:09 11 Q. Okay. Do you know what a  
 10:53:10 12 defendant is?  
 10:53:13 13 MR. BURKE: Objection to  
 10:53:13 14 relevance.  
 10:53:16 15 A. A defendant is -- I know the  
 10:53:33 16 definition, I think, but -- the defendant is  
 10:53:39 17 one that is being sued, or that.  
 10:53:45 18 Q. Mr. Zoellner, when do you have  
 10:53:47 19 these meetings? I know it's once per month.  
 10:53:49 20 Is it the first Monday or when is it?  
 10:53:52 21 A. No, no, it isn't -- when we leave  
 10:53:54 22 each other at that meeting, then we set another  
 10:53:58 23 date for the next meeting, and make sure  
 10:54:01 24 that -- I want to make sure this is correct.  
 10:54:04 25 Sometimes it isn't a luncheon meeting, it's --

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10:55:23 1 Q. Okay. What do you mean, "how Walt  
 10:55:25 2 could do this?"  
 10:55:26 3 A. "How Walt could sue and stretch  
 10:55:28 4 this out this long to get the final merger  
 10:55:35 5 accomplished.  
 10:55:36 6 Q. How do you feel about being sued  
 10:55:37 7 by Mr. Thiemann?  
 10:55:46 8 A. I don't -- I don't have a  
 10:55:49 9 particular feeling. He was a friend. He's  
 10:55:54 10 still a friend of mine, it's just that he has a  
 10:55:57 11 right to do what he wants to do.  
 10:55:58 12 Q. Do you consider Mr. Thiemann to be  
 10:56:00 13 a man of integrity?  
 10:56:02 14 MR. BURKE: Objection. Calls for  
 10:56:03 15 speculation.  
 10:56:04 16 A. I, I don't know. I do not know.  
 10:56:07 17 Q. Do you consider him to be an  
 10:56:08 18 honest man?  
 10:56:09 19 MR. BURKE: Same objection.  
 10:56:15 20 A. I, I'd -- I think he was.  
 10:56:19 21 Q. Do you have any idea what charges  
 10:56:23 22 have been leveled against you?  
 10:56:26 23 A. I, I don't know what charges. I  
 10:56:30 24 don't -- it's all -- I don't know of any  
 10:56:33 25 charges against me.

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10:54:06 1 we meet at one of the fella's homes and we play  
 10:54:09 2 a little poker.  
 10:54:11 3 Q. Have you had the October meeting  
 10:54:14 4 yet?  
 10:54:19 5 A. I don't -- no, I don't think so.  
 10:54:24 6 Q. Did you talk to anyone other than  
 10:54:26 7 your counsel about this upcoming deposition?  
 10:54:29 8 A. No.  
 10:54:32 9 Q. Okay. How many meetings have you  
 10:54:34 10 had in total, approximately?  
 10:54:38 11 MR. BURKE: Objection. Asked and  
 10:54:39 12 answered.  
 10:54:40 13 A. Well, what are we -- this is what,  
 10:54:43 14 18 months about since the merger; is that  
 10:54:48 15 right? So we miss one now and then, so  
 10:54:51 16 probably maybe 16 in the last 18 months.  
 10:54:56 17 Q. Okay. And can you tell me --  
 10:54:58 18 A. That's only an estimate.  
 10:54:59 19 Q. And can you tell me anything that  
 10:55:00 20 was discussed at any of these meetings?  
 10:55:08 21 A. The biggest discussion is, is that  
 10:55:11 22 Walt Thiemann and how -- we didn't understand  
 10:55:14 23 how Walt could do this. That's about the  
 10:55:17 24 extent of it, because we have nothing else to  
 10:55:20 25 refer to that I can think of at this point.

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10:56:34 1 Q. Did you ever read the complaint?  
 10:56:41 2 A. I don't remember if I did.  
 10:56:48 3 Q. Do you consider this litigation  
 10:56:51 4 and being a defendant in this litigation  
 10:56:52 5 important to you?  
 10:56:54 6 MR. BURKE: Objection. Vague,  
 10:56:57 7 relevance.  
 10:56:59 8 A. Answer?  
 10:57:00 9 MR. BURKE: Yes. Go ahead, I'm  
 10:57:01 10 sorry.  
 10:57:03 11 A. Yeah, I think it's -- give me the  
 10:57:07 12 question again?  
 10:57:09 13 Q. Okay. Do you consider being a  
 10:57:10 14 defendant in this litigation to be important to  
 10:57:12 15 you?  
 10:57:12 16 A. Oh, yes.  
 10:57:14 17 Q. Do you think that with respect to  
 10:57:16 18 something that's important in your life, you  
 10:57:18 19 might want to read the relevant documents?  
 10:57:22 20 MR. BURKE: Objection.  
 10:57:22 21 Argumentative.  
 10:57:23 22 A. That's up to my attorneys -- or  
 10:57:25 23 our attorneys to handle all that.  
 10:57:31 24 Q. Okay. Please take a look at  
 10:57:32 25 Herron Deposition Exhibit 1. Mr. Zoellner,

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10:58:00 1 have you seen that document before?

10:58:01 2 A. No.

10:58:04 3 Q. You've never seen the 1998 Oak

10:58:07 4 Hills annual report before?

10:58:09 5 A. Yes, but this is Herron's

10:58:11 6 deposition, you said.

10:58:13 7 Q. No --

10:58:14 8 A. I didn't see this.

10:58:15 9 Q. Okay. Have you seen what has been

10:58:17 10 marked as Herron Deposition Exhibit Number 1?

10:58:21 11 MR. BURKE: Have you ever seen the

10:58:22 12 document before, if you know.

10:58:25 13 A. No, I've never seen that. The

10:58:27 14 only thing I've seen of Herron's is the letter

10:58:30 15 he sent me.

10:58:31 16 Q. Okay. Have you ever seen the 1998

10:58:34 17 annual report that was issued by Oak Hills?

10:58:37 18 A. Well, we were still in operation,

10:58:39 19 weren't we, in '98, so I would have seen that.

10:58:43 20 Because that would have been brought to -- the

10:58:45 21 financial statement would have been brought to

10:58:47 22 the meeting.

10:58:48 23 Q. Okay. And let me represent to you

10:58:49 24 that this is a copy of that document. The only

10:58:52 25 difference is it has this sticker on it and it

10:58:54 1 has these WWT numbers on it. Do you see that?

10:58:58 2 A. Yeah, I see that.

10:58:59 3 Q. Would you like to take a minute to

10:59:01 4 just peruse the document to familiarize

10:59:05 5 yourself with it?

10:59:05 6 A. Oh.

11:00:25 7 Q. Okay. Mr. Zoellner, my question

11:00:27 8 is --

11:00:28 9 MR. BURKE: Wait a minute. Mr.

11:00:28 10 Zoellner is still reviewing the document, as

11:00:30 11 you invited him to do.

11:00:34 12 A. Yeah. There's so much involved in

11:00:36 13 here, I don't remember seeing any of this.

11:00:38 14 Q. Okay.

11:00:38 15 A. This probably was at our meeting.

11:00:40 16 If this was in our meeting, then I did see it,

11:00:47 17 but I can't -- nothing recalled. This seems

11:00:47 18 like an awful lot.

11:00:48 19 Q. Okay. Mr. Zoellner, please take a

11:00:50 20 look at the fourth page of the document. Do

11:00:55 21 you see the third bullet point? It starts,

11:00:58 22 your Board of Directors.

11:00:59 23 A. Your Board of Directors increased

11:01:00 24 the company's quarterly cash dividend to .125

11:01:06 25 effective June 30th. Is that what you're

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11:01:09 1 referring to?

11:01:10 2 Q. Right. Who were the Oak Hills

11:01:11 3 directors at this point in time?

11:01:13 4 MR. BURKE: Objection. You may

11:01:14 5 answer.

11:01:22 6 A. Who were the directors at this

11:01:27 7 time? I think Tom Herron was still a director

11:01:34 8 at that time, wasn't he? I don't, I don't know

11:01:36 9 the date that that resignation was.

11:01:43 10 Q. Okay. Mr. Zoellner, perhaps I

11:01:44 11 could assist you. Would you look at the third

11:01:47 12 to last page of the document? That's the --

11:01:54 13 A. Oh, okay.

11:01:55 14 Q. Do you see the directors listed

11:01:56 15 there in the left-hand column?

11:01:59 16 A. Um-hmm.

11:01:59 17 Q. And you have eight directors; is

11:02:01 18 that correct?

11:02:02 19 A. Two, four, six, seven -- who isn't

11:02:07 20 on that? Yes, there was eight directors. I

11:02:20 21 was looking at this, there's only seven.

11:02:23 22 Q. Right. And the phrase on the

11:02:26 23 fourth page of the document, "Your Board of

11:02:30 24 Directors," refers to those eight directors,

11:02:32 25 correct?

11:02:33 1 MR. BURKE: Objection. Calls for

11:02:34 2 speculation, document speaks for itself. You

11:02:36 3 may answer.

11:02:37 4 A. Yeah. Well, I don't know what the

11:02:39 5 document says, so I can't say that it does or

11:02:41 6 it doesn't.

11:02:43 7 Q. Okay. Mr. Zoellner, please turn

11:02:44 8 to the fourth page of the document.

11:02:53 9 A. That's the --

11:02:54 10 Q. And do you see the third bullet

11:02:55 11 point, "Your Board of Directors"?

11:02:56 12 A. "Your Board of Directors increased

11:02:57 13 the company's quarterly" --

11:03:00 14 Q. Right. And when you see the

11:03:01 15 phrase "Your Board of Directors," to whom does

11:03:03 16 that phrase refer?

11:03:06 17 A. "Your Board of Directors" is the

11:03:07 18 eight of us.

11:03:08 19 Q. Okay. Now, let's take a look at

11:03:12 20 Herron Deposition Exhibit 2.

11:03:15 21 MR. BURKE: I'm going to object to

11:03:16 22 the use of that document, Mike. He's already

11:03:19 23 testified he hasn't seen it. If you want to

11:03:21 24 use Defendant's Exhibit 1, that's fine.

11:03:24 25 MR. BURKE: Jim, that's fine.



11:03:24 1 Your objection is noted.  
 11:03:24 2 BY MR. BRAUTIGAM:  
 11:03:26 3 Q. All right. Do you see that  
 11:03:27 4 sentence there, "Your Board of Directors" and  
 11:03:29 5 I'll read the rest of it. "Your Board of  
 11:03:31 6 Directors unanimously approved the acquisition  
 11:03:33 7 and believes that it is in the best interest of  
 11:03:35 8 OHSL stockholders." Did I read that sentence  
 11:03:40 9 correctly?  
 11:03:40 10 A. Yes.  
 11:03:41 11 Q. Okay. Is that a true statement?  
 11:03:42 12 A. It's all according to the time  
 11:03:44 13 that was written. This was before Tom Herron  
 11:03:52 14 was no longer a director. He was a director at  
 11:03:55 15 that time, so then that statement would be  
 11:03:57 16 true.  
 11:03:59 17 Q. Okay. Mr. Zoellner, you're an  
 11:04:00 18 accountant by training, correct?  
 11:04:02 19 A. Yeah. Retired.  
 11:04:03 20 Q. And you were a CPA, correct?  
 11:04:03 21 A. Right.  
 11:04:06 22 Q. Correct?  
 11:04:08 23 MR. BURKE: Objection.  
 11:04:09 24 A. I was a public accountant and then  
 11:04:11 25 they grandfathered that as a CPA at the end,

11:04:54 1 committee meetings was the concept of  
 11:04:56 2 materiality discussed?  
 11:04:58 3 A. The concept of materiality. I'm  
 11:05:07 4 sorry. You're talking about whether this was  
 11:05:09 5 material or not. My -- had any meaning to it,  
 11:05:12 6 right, is that what you --  
 11:05:13 7 Q. No. I'm talking about your  
 11:05:15 8 understanding, whatever it is, if you have one,  
 11:05:17 9 of the concept of materiality.  
 11:05:19 10 MR. BURKE: I think the question  
 11:05:20 11 was was it discussed at the audit committee  
 11:05:22 12 meetings, if that's the question. If you'd  
 11:05:24 13 like to rephrase it, that's fine.  
 11:05:26 14 MR. BRAUTIGAM: I'm comfortable  
 11:05:27 15 with the question that's pending.  
 11:05:29 16 MR. BURKE: Please reread the  
 11:05:30 17 question.  
 11:05:30 18 (Record read by Reporter.)  
 11:05:42 19 MR. BURKE: Objection. Asked and  
 11:05:42 20 answered, calls for speculation. You may  
 11:05:44 21 answer it.  
 11:05:52 22 A. I really don't understand what you  
 11:05:54 23 want.  
 11:05:56 24 Q. Okay. Are you familiar with the  
 11:05:56 25 concept of fiduciary duty?

11:04:15 1 yes.  
 11:04:15 2 Q. And you're familiar with the  
 11:04:16 3 concept of materiality, correct?  
 11:04:19 4 MR. BURKE: Objection. Calls for  
 11:04:20 5 speculation. Calls for legal conclusion.  
 11:04:22 6 A. I don't know what you mean by  
 11:04:23 7 that.  
 11:04:25 8 Q. You're unfamiliar with the concept  
 11:04:26 9 of materiality?  
 11:04:28 10 MR. BURKE: Objection. Asked and  
 11:04:30 11 answered.  
 11:04:31 12 Q. Is that correct?  
 11:04:31 13 A. Yes.  
 11:04:32 14 Q. How can you be a CPA and not be  
 11:04:34 15 familiar with the concept of materiality?  
 11:04:37 16 MR. BURKE: Objection. Calls for  
 11:04:37 17 speculation. You can answer.  
 11:04:39 18 A. Well, that was when I was a little  
 11:04:41 19 sharper at that time. That's twelve years ago.  
 11:04:44 20 I haven't practiced or done anything, so  
 11:04:46 21 I've --  
 11:04:47 22 Q. Mr. Zoellner, you were a member of  
 11:04:48 23 the Oak Hills audit committee, correct?  
 11:04:51 24 A. Yes.  
 11:04:51 25 Q. And during that time at audit

11:05:59 1 MR. BURKE: Objection. Relevance.  
 11:06:00 2 A. No. No. Fiduciary duties, no,  
 11:06:04 3 I --  
 11:06:05 4 Q. Are you familiar with the concepts  
 11:06:06 5 of the federal securities laws?  
 11:06:08 6 A. No.  
 11:06:09 7 MR. BURKE: Objection. Calls for  
 11:06:10 8 a legal conclusion.  
 11:06:13 9 Q. You served as a director of Oak  
 11:06:16 10 Hills during the entire time it was a public  
 11:06:17 11 company, correct?  
 11:06:19 12 A. Yes.  
 11:06:22 13 Q. Did you have any responsibility to  
 11:06:24 14 the shareholders during that time?  
 11:06:29 15 A. Well, it was always a  
 11:06:31 16 responsibility. And one of them was to look at  
 11:06:35 17 anybody that wanted to merge or anybody that  
 11:06:37 18 wanted to buy or sell or that. We always tried  
 11:06:41 19 to keep on top of that.  
 11:06:43 20 Q. What other responsibilities did  
 11:06:44 21 you have to the shareholders?  
 11:06:52 22 A. To try to make a profit, pay a  
 11:06:58 23 dividend after we became a stock company so we  
 11:06:58 24 could pay a dividend. The profits was  
 11:06:59 25 important.



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11:07:00 1 Q. What's the function of a Board of  
 11:07:01 2 Directors?  
 11:07:02 3 MR. BURKE: Objection to  
 11:07:02 4 relevance. You may answer.  
 11:07:06 5 A. The function of a Board of  
 11:07:09 6 Directors is to guide the savings and loan in  
 11:07:18 7 the direction where they would make a profit or  
 11:07:21 8 be beneficial to the shareholder.  
 11:07:23 9 Q. Are you familiar with the term  
 11:07:25 10 management?  
 11:07:26 11 A. Management?  
 11:07:26 12 Q. Yes.  
 11:07:27 13 A. Yes.  
 11:07:28 14 Q. Did Oak Hills have management?  
 11:07:30 15 A. Yes.  
 11:07:31 16 Q. Who was the senior management at  
 11:07:32 17 Oak Hills?  
 11:07:33 18 A. Ken Hanauer.  
 11:07:35 19 Q. Anyone else?  
 11:07:37 20 A. Well, he was senior. He was the  
 11:07:40 21 manager. Our chairman of the Board was Norb  
 11:07:43 22 Brinker, but our manager was Ken Hanauer.  
 11:07:49 23 Q. Okay. Was there anyone else who  
 11:07:50 24 served in a senior management role --  
 11:07:53 25 A. Yes.

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11:09:44 1 materials, but you know that some proxy  
 11:09:46 2 materials did exist, correct?  
 11:09:48 3 A. That is true.  
 11:09:49 4 Q. Okay. Can you accept my  
 11:09:50 5 representation that Defendant's Exhibit 1 were  
 11:09:52 6 the proxy materials that were used with respect  
 11:09:55 7 to this merger?  
 11:09:57 8 MR. BURKE: Objection to form.  
 11:10:00 9 A. I, I can't say yes or no, because  
 11:10:04 10 I don't know.  
 11:10:04 11 Q. Well, what I'm saying is, if I ask  
 11:10:06 12 you to assume that these were the proxy  
 11:10:10 13 materials that were used for the Oak  
 11:10:12 14 Hills-Provident merger, can you accept that?  
 11:10:26 15 A. Why, why do I want to accept this  
 11:10:27 16 as such? It's all according to what it's going  
 11:10:31 17 to lead into. If you're going to pull  
 11:10:33 18 something out of there that I'm not familiar  
 11:10:35 19 with, then I -- it's hard for me to say this  
 11:10:40 20 whole thing is okay. You've --  
 11:10:43 21 Q. Mr. Zoellner, I'm not asking you  
 11:10:45 22 to say that it's okay. I showed you the  
 11:10:47 23 document.  
 11:10:48 24 A. Yeah.  
 11:10:48 25 Q. You were unable to identify it.

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11:07:53 1 Q. -- at Oak Hills?  
 11:07:55 2 A. Yes. The CFO, chief financial  
 11:08:02 3 officer. Another would be -- another one would  
 11:08:08 4 be the mortgage loan department head. And then  
 11:08:16 5 we had a -- what the devil was her title?  
 11:08:40 6 That's terrible. Those names aren't coming to  
 11:08:43 7 me.  
 11:08:46 8 Q. Okay. Mr. Zoellner, let me direct  
 11:08:49 9 your attention to Defendant's Exhibit 1. These  
 11:08:53 10 are the proxy materials, correct?  
 11:08:59 11 A. Is that what it says? Special  
 11:09:00 12 meeting. That wouldn't be the proxy, but it --  
 11:09:05 13 that would --  
 11:09:09 14 MR. BURKE: I think that was  
 11:09:09 15 already asked and answered, that he was unable  
 11:09:12 16 to identify this document but he recalled the  
 11:09:15 17 proxy materials, so you may answer it if you  
 11:09:17 18 know, Mr. Zoellner.  
 11:09:32 19 A. I, I don't recall this at all.  
 11:09:35 20 Q. Okay. You understand that there  
 11:09:37 21 were proxy materials with respect to the  
 11:09:38 22 merger, correct?  
 11:09:39 23 A. Yes.  
 11:09:39 24 Q. And you're unable to identify  
 11:09:42 25 Defendant's Exhibit 1 as being these proxy

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11:10:50 1 What I'm saying is, can you accept my  
 11:10:52 2 representation that these were the document --  
 11:10:55 3 this was the document that was mailed to the  
 11:10:57 4 Oak Hills shareholders?  
 11:10:59 5 MR. BURKE: Objection. Asked and  
 11:11:00 6 answered.  
 11:11:01 7 A. Well, I, I don't think this is the  
 11:11:02 8 document that was mailed to them. It -- it was  
 11:11:07 9 not that thick. That's a big --  
 11:11:09 10 Q. Okay. Will you accept my  
 11:11:11 11 representation that this is a copy of the  
 11:11:12 12 document that was mailed to the shareholders?  
 11:11:14 13 A. Not the whole thing, because this  
 11:11:15 14 whole thing was not mailed out.  
 11:11:17 15 Q. Mr. Zoellner, I believe that  
 11:11:19 16 that's inaccurate, that this document in a  
 11:11:22 17 slightly different form, perhaps it was bound,  
 11:11:25 18 perhaps there were copies on both sides, this  
 11:11:28 19 is a one-sided copy, was mailed out. But in  
 11:11:31 20 substance, this is the document. Can you  
 11:11:33 21 accept that representation?  
 11:11:35 22 MR. BURKE: Objection.  
 11:11:35 23 A. Okay. I'll accept it.  
 11:11:36 24 Q. Okay, thank you. Now, what is the  
 11:11:38 25 function of the proxy materials?

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11:11:40 1 MR. BURKE: Objection. Calls for  
 11:11:41 2 a legal conclusion and speculation. You may  
 11:11:42 3 answer if you know.  
 11:11:46 4 A. What's the purpose of a proxy?  
 11:11:48 5 Q. Yes.  
 11:11:49 6 A. It is if you can't be there and  
 11:11:50 7 attend, you can vote by proxy.  
 11:11:57 8 Q. Okay. And what were the Oak Hills  
 11:11:58 9 shareholders being asked to vote on?  
 11:12:04 10 A. At this meeting about the merger  
 11:12:06 11 with Provident, they were asking to approve it  
 11:12:08 12 or disapprove it.  
 11:12:11 13 Q. And what material was sent to them  
 11:12:13 14 so they could evaluate the proposed  
 11:12:15 15 transaction?  
 11:12:16 16 A. I don't know. I don't remember.  
 11:12:19 17 Q. Would it be fair to say that it  
 11:12:20 18 was this document, Defendant's Exhibit 1, that  
 11:12:23 19 was sent to them?  
 11:12:24 20 MR. BURKE: Objection. Asked and  
 11:12:25 21 answered. You may answer.  
 11:12:26 22 A. Well, from my memory, I don't  
 11:12:28 23 think it was that big. It was smaller, so I  
 11:12:31 24 can't say it's this, this here.  
 11:12:37 25 Q. Okay. You agree that some proxy

11:12:45 1 materials were sent to the Oak Hills  
 11:12:47 2 shareholders, correct?  
 11:12:48 3 A. Yes.  
 11:12:49 4 MR. BURKE: Objection. Asked and  
 11:12:49 5 answered.  
 11:12:50 6 Q. Okay. What was the purpose of  
 11:12:51 7 that document, whatever form it took?  
 11:12:54 8 A. What was the purpose?  
 11:12:55 9 Q. Yes.  
 11:12:57 10 A. Well, that's -- if I'm not  
 11:13:00 11 mistaken, every year the proxies are mailed out  
 11:13:03 12 to every stockholder. And they have a right to  
 11:13:07 13 vote by proxy, or if they're going to attend  
 11:13:12 14 the meeting then they don't send it in, they go  
 11:13:15 15 and vote in person.  
 11:13:16 16 Q. Are you referring to the annual  
 11:13:18 17 meeting of shareholders?  
 11:13:23 18 A. I'm referring to the annual  
 11:13:23 19 meeting, yes.  
 11:13:23 20 Q. Okay. During 1999 was there a  
 11:13:23 21 special meeting of shareholders on or about  
 11:13:26 22 October 25th, 1999?  
 11:13:29 23 A. I was reading some of this that  
 11:13:31 24 you laid out here, and there was a special  
 11:13:34 25 meeting, I just saw that. I read it here,

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11:13:37 1 otherwise I wouldn't have remembered what date,  
 11:13:41 2 but they were mailed out also, just like the  
 11:13:45 3 regular, for a special meeting.  
 11:13:49 4 Q. And what was the purpose of that  
 11:13:51 5 special meeting?  
 11:13:54 6 A. Whether we should merge with  
 11:13:55 7 Provident or not.  
 11:13:58 8 Q. And this merger was to some extent  
 11:14:02 9 dependent on the shareholder vote, correct?  
 11:14:04 10 A. Well, it was dependent on that.  
 11:14:06 11 If -- however they voted it, if they voted for  
 11:14:10 12 it, it was consummated; if they voted against  
 11:14:13 13 it, we'd still be in business.  
 11:14:15 14 Q. And the purpose of the proxy  
 11:14:18 15 materials was to inform the Oak Hills  
 11:14:21 16 shareholders as to the proposed transaction,  
 11:14:24 17 correct?  
 11:14:25 18 MR. BURKE: Objection, leading.  
 11:14:26 19 A. Well, I'd have to read what was  
 11:14:28 20 sent out. I don't remember what was sent out,  
 11:14:31 21 whether that's completely true or not, but it  
 11:14:34 22 was for them to vote for the merger or against  
 11:14:37 23 the merger.  
 11:14:40 24 Q. Okay. And how were the  
 11:14:43 25 shareholders to form an opinion with respect to

11:14:46 1 whether or not they should vote in favor of or  
 11:14:49 2 against this proposed merger?  
 11:14:51 3 MR. BURKE: Objection.  
 11:14:55 4 A. I don't know.  
 11:14:57 5 Q. Would it be --  
 11:14:58 6 A. I don't know.  
 11:14:58 7 Q. Would it be fair to say that the  
 11:15:01 8 shareholders were to rely on the proxy  
 11:15:03 9 materials?  
 11:15:04 10 MR. BURKE: Objection.  
 11:15:08 11 A. I do not know.  
 11:15:12 12 Q. Is there anything other than the  
 11:15:14 13 proxy materials that you believe the  
 11:15:16 14 shareholders should rely on with respect to  
 11:15:19 15 this decision?  
 11:15:21 16 MR. BURKE: Objection. Calls for  
 11:15:24 17 speculation.  
 11:15:24 18 A. I do not know.  
 11:15:38 19 Q. Let me direct your attention to  
 11:15:40 20 this sentence again, it says, "Your Board of  
 11:15:44 21 Directors unanimously approved the acquisition  
 11:15:46 22 and believes that it is in the best interest of  
 11:15:48 23 OHSL stockholders." Do you see that sentence,  
 11:15:52 24 Mr. Zoellner?  
 11:15:52 25 A. Yes.

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11:15:54 1 Q. Okay. We talked about how Mr.  
11:15:59 2 Zoellner was not a director later in 1999 --  
11:16:03 3 excuse me, Mr. Herron was not a director later  
11:16:06 4 in 1999; is that correct?

11:16:07 5 A. That is right.

11:16:09 6 Q. Do you know if Mr. Herron voted  
11:16:12 7 with respect to the proposed merger?

11:16:18 8 A. I do not know.

11:16:23 9 Q. Okay. Putting Mr. Herron aside  
11:16:24 10 for the moment, we talked about this phrase,  
11:16:29 11 "Your Board of Directors," referring to eight  
11:16:31 12 directors, correct?

11:16:33 13 A. I, I would --

11:16:35 14 MR. BURKE: Objection to form.  
11:16:36 15 You may answer. Mischaracterizes the document.  
11:16:39 16 Document speaks for itself. I think it's  
11:16:44 17 already been asked and answered. You may  
11:16:45 18 answer it, Howard. On second thought, read  
11:16:50 19 that question back.

11:16:50 20 (Record read by Reporter.)

11:17:01 21 MR. BURKE: Objection. You  
11:17:02 22 referred to it in a different document,  
11:17:04 23 misleading question.

11:17:07 24 MR. BRAUTIGAM: Actually the  
11:17:07 25 phrase carries over so it's not misleading, but

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11:17:50 1 one?

11:18:03 2 Q. Mr. Zoellner, I can't find the  
11:18:05 3 date right this minute, but let me represent to  
11:18:07 4 you that this came out at some point before  
11:18:10 5 July 27th, 1999, in 1999. This was used for  
11:18:14 6 your annual meeting which took place on April  
11:18:18 7 15th, 1999. Does that ring a bell?

11:18:21 8 A. April 15th? Well, then his  
11:18:23 9 resignation was after this, right? This was  
11:18:27 10 April, this was July?

11:18:29 11 MR. BURKE: And "this," just so  
11:18:31 12 the record is somewhat intelligible, is Herron  
11:18:33 13 Deposition Exhibit 1, the OHSL Financial Corp  
11:18:37 14 1998 annual report.

11:18:41 15 Q. Okay. And the phrase "Your Board  
11:18:44 16 of Directors" as it's used in Herron Deposition  
11:18:47 17 Exhibit 1 is also used in Herron -- excuse me,  
11:18:52 18 Defendant's Exhibit 1 as well, correct?

11:18:54 19 MR. BURKE: Objection.  
11:18:54 20 Mischaracterizes the document.  
11:18:56 21 Mischaracterizes his testimony. You may  
11:18:59 22 answer.

11:18:59 23 A. You said Herron, this is --  
11:19:01 24 Hanauer has written this up and signed it.  
11:19:05 25 Herron --

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11:17:10 1 anyway.

11:17:10 2 MR. BURKE: It's totally  
11:17:11 3 misleading, Mike, but you referred to it in a  
11:17:15 4 different document.

11:17:17 5 MR. BRAUTIGAM: Jim, I'm not going  
11:17:17 6 to debate this with you.

11:17:17 7 BY MR. BRAUTIGAM:

11:17:19 8 Q. Mr. Zoellner, we talked about the  
11:17:20 9 phrase "Your Board of Directors" referring to  
11:17:21 10 eight directors, correct?

11:17:24 11 A. Yeah. Well, it's all according to  
11:17:26 12 the timing of what -- the date.

11:17:28 13 Q. Okay.

11:17:29 14 A. And I do not know when he sent his  
11:17:32 15 resignation in.

11:17:34 16 Q. Okay.

11:17:34 17 A. If he was a director at this time  
11:17:37 18 or not.

11:17:39 19 Q. Okay. This --

11:17:40 20 A. This is --

11:17:41 21 MR. BURKE: Wait a minute. Go  
11:17:42 22 ahead and answer.

11:17:42 23 A. I don't know whether he was a  
11:17:43 24 director at this time or not. It's -- this is  
11:17:47 25 July the 27th, '99. What's the date on this

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11:19:06 1 Q. Mr. Zoellner, for the minute --

11:19:08 2 A. Yeah.

11:19:09 3 Q. -- this is a different document.  
11:19:10 4 It doesn't have anything to do with Mr. Hanauer  
11:19:13 5 right now.

11:19:15 6 A. Okay.

11:19:22 7 Q. Do you see the phrase "Your Board  
11:19:24 8 of Directors" here?

11:19:25 9 MR. BURKE: Now we're referring to  
11:19:26 10 a different document, Defendant's Exhibit 1?

11:19:33 11 Q. Right.

11:19:33 12 MR. BURKE: Okay.

11:19:36 13 Q. Mr. Zoellner, do you see that  
11:19:38 14 phrase?

11:19:38 15 A. "Your Board of Directors  
11:19:39 16 unanimously approved the acquisition and  
11:19:42 17 believes that it is in the best interest of  
11:19:44 18 OHSL stockholders. The Board then recommends  
11:19:49 19 and advises that you approve the acquisition."  
11:19:52 20 Yeah, I see that.

11:19:55 21 Q. Okay. To which directors does the  
11:19:56 22 phrase in Defendant's Exhibit 1, "Your Board of  
11:19:59 23 Directors," refer to?

11:20:13 24 A. Well, let's see, we've got -- this  
11:20:16 25 was for -- as of -- going to be presented

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11:20:19 1 October 25th, '99 and he resigned on July 27th  
11:20:24 2 in '99. So this would be seven rather than  
11:20:29 3 eight.

11:20:30 4 Q. Okay. Does it say that there are  
11:20:31 5 only seven directors anywhere in the document?

11:20:34 6 MR. BURKE: Objection.

11:20:34 7 A. I do not know.

11:20:35 8 MR. BURKE: You can go ahead and  
11:20:36 9 answer. Read it if you want to, but the  
11:20:38 10 document speaks for itself, Mr. Brautigam.

11:20:41 11 Q. Okay. Mr. Zoellner --

11:20:41 12 A. Yeah.

11:20:42 13 Q. -- do you think it's important to  
11:20:43 14 tell the shareholders that one of their eight  
11:20:46 15 directors resigned?

11:20:47 16 MR. BURKE: Objection. Calls for  
11:20:48 17 speculation. You may answer.

11:20:53 18 A. I don't think it's important that  
11:20:56 19 they be notified, no.

11:20:58 20 Q. Why not?

11:20:58 21 A. Well, I don't know. I don't know.

11:21:20 22 Q. Okay. Let's take a look at what  
11:21:22 23 has previously been marked as Defendant's  
11:21:25 24 Exhibit 23. Mr. Zoellner, have you ever seen  
11:21:27 25 that document before?

11:21:40 1 A. Is this a list of the  
11:21:41 2 shareholders?

11:21:44 3 MR. BURKE: His question is, have  
11:21:45 4 you ever seen it before.

11:21:47 5 A. I don't think I have seen it  
11:21:48 6 before.

11:21:48 7 Q. Are you familiar with this  
11:21:49 8 document?

11:21:50 9 MR. BURKE: Objection. It sort of  
11:21:52 10 follows from the prior answer.

11:21:57 11 A. I, I know what it is, but I  
11:21:59 12 haven't -- I don't think I've seen it before.

11:22:01 13 Q. What is this document?

11:22:03 14 A. It's a list -- according to what  
11:22:04 15 it says here, this is a list of the  
11:22:07 16 stockholders.

11:22:08 17 Q. And that's the extent of your  
11:22:10 18 knowledge with respect to this document; is  
11:22:11 19 that correct?

11:22:11 20 A. Yes. I, I don't -- I don't  
11:22:14 21 remember seeing this at all.

11:22:33 22 Q. Okay.

11:22:33 23 MR. BURKE: Off the record.

11:22:33 24 (Discussion off the record.)

11:22:50 25 Q. Mr. Zoellner, I have placed before

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11:22:51 1 you Zoellner Deposition Exhibit 3 and I ask you  
11:22:54 2 to take a look at it. Have you seen it before?

11:22:59 3 A. Well, I probably have because it's  
11:23:02 4 a regular meeting of the Board of Directors of  
11:23:06 5 January 21st, '99, and we received these  
11:23:12 6 minutes each time, so I -- and I was present  
11:23:18 7 there, so I did see it.

11:23:19 8 Q. Okay. And if you flip over to the  
11:23:21 9 second page of the document, do you see that  
11:23:27 10 Mr. Herron is nominated to be a director again?  
11:23:36 11 Is that correct?

11:23:37 12 MR. BURKE: Where are you  
11:23:38 13 referring to?

11:23:39 14 Q. At the bottom, three individuals  
11:23:41 15 named.

11:23:42 16 MR. BURKE: Okay.

11:23:54 17 A. Okay. Yes, it says there at the  
11:23:56 18 bottom that Tom Herron, Bill Hillebrand and Joe  
11:24:01 19 Tenoever, yes.

11:24:02 20 Q. And what was the term that Mr.  
11:24:04 21 Herron was supposed to serve as a director?

11:24:29 22 A. I forget the term. I think that  
11:24:36 23 the term was three years.

11:24:39 24 Q. And Mr. Herron resigned before his  
11:24:41 25 time was up, correct?

11:24:43 1 A. That is correct.

11:24:43 2 Q. And you don't believe that it's  
11:24:45 3 important to notify the shareholders of that  
11:24:47 4 fact, correct?

11:24:49 5 MR. BURKE: Objection. Asked and  
11:24:49 6 answered.

11:24:51 7 A. No, I don't think it's -- my  
11:24:53 8 personal thinking, no, it isn't.

11:24:56 9 Q. Well, I'm not interested in your  
11:24:57 10 personal thinking, I'm interested in your  
11:24:59 11 thinking as an OHSB Board member.

11:25:01 12 A. Board member.

11:25:02 13 Q. Is your answer the same?

11:25:04 14 A. Answer is the same.

11:25:05 15 Q. Okay, great. On January 21st,  
11:25:07 16 1999, what were you looking forward to with  
11:25:09 17 respect to Oak Hills in 1999? Did you think  
11:25:12 18 they'd have a good year or bad year or  
11:25:15 19 something else?

11:25:16 20 MR. BURKE: Objection to form,  
11:25:16 21 vague. You can answer.

11:25:18 22 A. Well, we naturally -- we were  
11:25:20 23 always looking for a good year and we were  
11:25:22 24 doing a good job. But we also, as I said  
11:25:24 25 earlier, we, we didn't turn anybody away that

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11:25:28 1 wanted to talk about a merger or a buy-out. We  
 11:25:32 2 figured it was in the best interest of the  
 11:25:34 3 stockholders to look and talk to anybody that  
 11:25:36 4 wanted to talk to us to see whether it was  
 11:25:39 5 better for them.

11:25:40 6 Q. Okay. On January 21st, 1999, were  
 11:25:44 7 you in favor of Oak Hills continuing to remain  
 11:25:47 8 independent?

11:25:48 9 A. Oh, these dates kill me. I don't  
 11:25:53 10 know.

11:25:54 11 Q. Okay.

11:25:54 12 A. I -- that date, I don't know.

11:26:06 13 Q. Okay. I'm handing you what has  
 11:26:07 14 been marked as Zoellner Deposition Exhibit 4  
 11:26:09 15 and I ask you to take a look at that. This  
 11:26:13 16 reflects the February 25th, 1999 OHSL Financial  
 11:26:18 17 Corporation Board meeting, correct?

11:26:20 18 A. Yes.

11:26:21 19 Q. And on or about February 25th,  
 11:26:24 20 1999, were you in favor of Oak Hills  
 11:26:28 21 maintaining its independence?

11:26:33 22 A. Oh, boy, these dates are killing  
 11:26:44 23 me, because at one time I was in favor of Oak  
 11:26:48 24 Hills staying independent and another time I  
 11:26:51 25 was in favor of the merger, but it's all

11:26:59 1 according to the dates when this -- I don't  
 11:26:59 2 know whether it was before this date or after  
 11:26:59 3 this date.

11:27:00 4 Q. Okay. Well, Mr. Zoellner,  
 11:27:01 5 generally speaking, why were you in favor of  
 11:27:04 6 Oak Hills remaining independent when you were  
 11:27:06 7 in favor of that?

11:27:08 8 A. Why? Because we were doing so  
 11:27:11 9 well. We were strong.

11:27:33 10 Q. Any other reasons?

11:27:36 11 A. Well, the other was we didn't have  
 11:27:37 12 anybody that was interested in, in a merger or  
 11:27:41 13 a sale that was to the advantage of the  
 11:27:44 14 stockholders, so then we would dismiss that.

11:27:48 15 Q. All right. How would you define a  
 11:27:49 16 merger or sale that was in the best interest of  
 11:27:52 17 the stockholder?

11:27:53 18 A. How would I define it? I guess  
 11:27:55 19 the best way would be to say that they'd earn  
 11:28:00 20 some money. They'd get cash, that's to the  
 11:28:04 21 benefit of the stockholders. We come out with  
 11:28:07 22 a profit.

11:28:10 23 Q. Was that the only consideration?

11:28:12 24 MR. BURKE: Objection. For what?

11:28:23 25 A. I, I don't know.

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11:28:37 1 Q. Okay. Mr. Zoellner, I am handing  
 11:28:39 2 you what has been marked as Zoellner Deposition  
 11:28:42 3 Exhibit 5. Mr. Zoellner, does this appear to  
 11:28:45 4 be the Board meeting of Oak Hills Savings &  
 11:28:50 5 Loan Company, F.A., February 25th, 1999? Now,  
 11:28:58 6 we just had one with the same date on it.

11:29:12 7 A. Well, one of these has to be  
 11:29:15 8 wrong.

11:29:15 9 Q. Why do you say that, Mr. Zoellner?

11:29:19 10 A. Because the minutes are February  
 11:29:20 11 25th, and February 25th is the same.

11:29:24 12 MR. BURKE: I'll direct your  
 11:29:26 13 attention, Mr. Zoellner, to the left column.

11:29:28 14 A. Oh, it's corrected.

11:29:30 15 Q. Mr. Zoellner, is there a  
 11:29:32 16 distinction between OHSL Financial Corporation  
 11:29:34 17 and Oak Hills Savings & Loan Company, F.A.?

11:29:37 18 A. Yes.

11:29:37 19 Q. What is that distinction?

11:29:41 20 A. That was the, the holding  
 11:29:43 21 corporation which the stock was issued from.

11:29:51 22 Q. And although the directors of both  
 11:29:55 23 boards were the same --

11:29:56 24 A. Same.

11:29:56 25 Q. -- they had different meetings,

11:29:58 1 correct?

11:29:59 2 A. Yes.

11:29:59 3 Q. And they had different meeting  
 11:30:01 4 minutes, correct?

11:30:01 5 A. Yes. I believe so.

11:30:03 6 Q. And Zoellner Deposition Exhibit 5  
 11:30:05 7 reflects the Board meeting of the savings and  
 11:30:08 8 loan, not of the holding company. Is that  
 11:30:10 9 correct?

11:30:11 10 A. Oh, yes. Now I -- this is the  
 11:30:12 11 stock company, this is the -- okay.

11:30:15 12 Q. Okay. I'd like to direct your  
 11:30:17 13 attention to the meeting of the savings and  
 11:30:19 14 loan on or about February 25th, 1999. Do you  
 11:30:22 15 remember anything about that meeting? And let  
 11:30:25 16 me give you a hint, this was the meeting where  
 11:30:27 17 the ad hoc committee was apparently appointed.  
 11:30:30 18 That's referred to on the second page of the  
 11:30:34 19 document at the very top.

11:30:36 20 MR. BURKE: Objection to form.

11:30:39 21 Q. Okay. Now, Mr. Zoellner, do you  
 11:30:42 22 remember anything independently about this  
 11:30:43 23 meeting where the ad hoc committee was  
 11:30:46 24 appointed?

11:30:55 25 A. I don't -- I remember them being



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11:30:56 1 appointed, but I don't remember anything about  
 11:30:58 2 the meeting.  
 11:30:59 3 Q. Okay. What was the purpose of the  
 11:31:00 4 ad hoc committee?  
 11:31:02 5 A. To investigate other companies and  
 11:31:07 6 that that might be good for the stockholders.  
 11:31:13 7 Q. Was the purpose of the ad hoc  
 11:31:14 8 committee to sell the company?  
 11:31:16 9 MR. BURKE: Objection. Asked and  
 11:31:17 10 answered. You may answer.  
 11:31:19 11 A. No. It wasn't to sell the  
 11:31:22 12 company, it was to make sure and -- that we  
 11:31:25 13 investigated everybody or every lead we had, so  
 11:31:28 14 that we could know whether it was in the  
 11:31:30 15 interest of the stockholders, not -- that we  
 11:31:35 16 did. And if the ad hoc committee came out with  
 11:31:39 17 some information on it that wasn't good, we'd  
 11:31:41 18 turn it down.  
 11:31:42 19 Q. Who was on the ad hoc committee?  
 11:31:45 20 A. Oh, I haven't tried -- there's no  
 11:31:54 21 list in there.  
 11:31:59 22 Q. Okay. Mr. Zoellner, were you in  
 11:32:01 23 favor of Oak Hills merging with a much larger  
 11:32:04 24 financial institution at this point, on or  
 11:32:06 25 about February 25th, 1999?

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11:33:10 1 Q. Okay. Mr. Zoellner, I'm handing  
 11:33:12 2 you what has been marked as Zoellner Deposition  
 11:33:15 3 Exhibit 6 and I'd ask you to take a look at it.  
 11:33:17 4 Have you seen that document before?  
 11:34:01 5 A. Yes, I have. I've seen this  
 11:34:03 6 before.  
 11:34:03 7 Q. Okay. Did you attend the annual  
 11:34:05 8 stockholder meeting on or about April 15th,  
 11:34:09 9 1999?  
 11:34:10 10 A. The minutes here show that I did.  
 11:34:11 11 Q. Do you remember anything about the  
 11:34:12 12 meeting?  
 11:34:21 13 A. No, other than what's written in  
 11:34:29 14 here, introduction of the directors and the  
 11:34:32 15 others that were present, just what the  
 11:34:35 16 minutes -- the minutes say.  
 11:34:41 17 Q. Okay. But you remember that the  
 11:34:41 18 directors were introduced, correct?  
 11:34:43 19 A. Yes.  
 11:34:43 20 Q. And do you remember that there was  
 11:34:44 21 some mention that Mr. Tenover was able to  
 11:34:51 22 attend?  
 11:34:52 23 A. Tenover?  
 11:34:53 24 Q. Do you remember that?  
 11:34:55 25 A. I don't remember that, but it says

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11:32:08 1 A. I'd have to look at the minutes in  
 11:32:10 2 the minute book to tell what -- whether I -- at  
 11:32:12 3 one time I wasn't in favor of it. We're with  
 11:32:17 4 dates again and I don't remember any of the  
 11:32:19 5 dates.  
 11:32:19 6 Q. Okay. You said you'd like to look  
 11:32:21 7 at the minutes. Could you look at these  
 11:32:23 8 minutes and would that help refresh your  
 11:32:25 9 recollection?  
 11:32:26 10 A. Well, these minutes should say  
 11:32:27 11 whether I voted against it or for it.  
 11:32:29 12 Q. Against or for?  
 11:32:31 13 A. The merger.  
 11:32:32 14 Q. Well, I don't believe we're there  
 11:32:33 15 yet.  
 11:32:34 16 A. Oh, okay.  
 11:32:36 17 Q. Okay. Do you remember anything  
 11:32:36 18 about a discussion that took place at this  
 11:32:37 19 meeting?  
 11:32:39 20 MR. BURKE: Objection. Asked and  
 11:32:40 21 answered.  
 11:32:48 22 A. I don't remember anything except  
 11:32:51 23 there was an ad hoc committee appointed.  
 11:32:53 24 That's the only thing I remember about these --  
 11:32:56 25 that meeting.

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11:34:56 1 it here and I believe that's what it -- what  
 11:35:00 2 happened.  
 11:35:00 3 Q. Do you believe it was important to  
 11:35:02 4 inform the shareholders that Mr. Tenover was  
 11:35:05 5 unable to attend?  
 11:35:07 6 MR. BURKE: Objection. Calls for  
 11:35:10 7 speculation.  
 11:35:11 8 A. I don't know whether he -- he  
 11:35:13 9 might have said when he introduced the  
 11:35:15 10 directors that Tenover wasn't able to attend.  
 11:35:19 11 He might have said that, I don't know.  
 11:35:20 12 Q. Who might have said --  
 11:35:22 13 A. Ken Hanauer, who ran the meeting.  
 11:35:24 14 Q. Why did Ken Hanauer run the  
 11:35:26 15 meetings?  
 11:35:28 16 A. Because he's our managing officer.  
 11:35:30 17 He always has.  
 11:35:32 18 Q. Isn't it more customary for the  
 11:35:33 19 chairman of the Board to run the meetings?  
 11:35:37 20 MR. BURKE: Objection.  
 11:35:37 21 A. I don't know.  
 11:35:38 22 Q. Have you ever been to an annual  
 11:35:39 23 meeting of a public company other than OHSL?  
 11:35:42 24 A. No.  
 11:35:45 25 Q. Were you in favor of Oak Hills



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11:35:47 1 maintaining its independence on or about April  
11:35:53 2 15th, 1999?

11:35:55 3 A. I'd have to look that up. Of our  
11:36:00 4 regular meeting, it should show in there how we  
11:36:03 5 voted at our regular meeting before we got it  
11:36:07 6 to the stockholders, but I did vote against it  
11:36:11 7 at times, but I can't tell you the dates. Then  
11:36:15 8 I changed and voted for it.

11:36:20 9 MR. BRAUTIGAM: Move to strike  
11:36:21 10 nonresponsive portions.

11:36:23 11 MR. BURKE: I think we've  
11:36:24 12 established that on the record, that that is  
11:36:27 13 his testimony on several occasions.

11:36:30 14 Q. Can you mark this as the next  
11:36:31 15 exhibit, please. Mr. Zoellner, I'm handing you  
11:36:44 16 what has been marked as Zoellner Deposition  
11:36:47 17 Exhibit 7 and I'd ask you to take a look at it.  
11:36:51 18 Have you seen that before?

11:36:54 19 A. Are these the minutes? I probably  
11:36:56 20 have. I can't say for sure, but I think I  
11:36:58 21 have.

11:36:59 22 Q. Okay. Were you in favor of Oak  
11:37:01 23 Hills maintaining its independence on or about  
11:37:04 24 March 25th, 1999?

11:37:06 25 MR. BURKE: Objection.

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11:39:06 1 MR. BURKE: Objection. Asked and  
11:39:07 2 answered. You may answer.

11:39:08 3 A. I do not know. It's all according  
11:39:10 4 to the date. As I said, at one point I was  
11:39:13 5 against it and then I changed, but I do not  
11:39:15 6 know whether it was before March 25th or after  
11:39:19 7 March 25th.

11:39:20 8 MR. BRAUTIGAM: Okay. Move to  
11:39:21 9 strike, nonresponsive.

11:39:22 10 A. Then this doesn't -- the minutes  
11:39:24 11 should say that we had a vote of the directors  
11:39:26 12 and this is what it is, because I can't tell  
11:39:29 13 you whether -- when -- when I voted one way and  
11:39:33 14 when I voted the other.

11:39:35 15 MR. BURKE: And I will  
11:39:35 16 respectfully disagree that that's not  
11:39:38 17 responsive. I think he's said that time and  
11:39:41 18 time again.

11:39:41 19 MR. BRAUTIGAM: It has nothing to  
11:39:42 20 do with the question.

11:39:44 21 MR. BURKE: Yes, it does.

11:39:45 22 MR. BRAUTIGAM: Therefore it is  
11:39:46 23 not responsive.

11:39:47 24 MR. BURKE: It is responsive.

11:39:47 25 BY MR. BRAUTIGAM:

11:37:07 1 A. I, I don't know. I'd have to read  
11:37:08 2 it to see what it says in the minutes. Those  
11:37:12 3 all should be in the minute book.  
11:37:14 4 Q. Okay. What specifically would you  
11:37:15 5 want to see?

11:37:17 6 A. Well, if they said who voted for  
11:37:21 7 and who voted against it.

11:37:25 8 Q. Well, it doesn't appear to me that  
11:37:27 9 you were offered a choice to vote for or  
11:37:30 10 against it, whatever "it" refers to, at this  
11:37:32 11 meeting. Is that fair?

11:37:35 12 A. I do not know that. I'd have to  
11:37:37 13 read this more.

11:37:39 14 Q. Okay. Why don't you take your  
11:37:40 15 time and read that with -- more carefully while  
11:37:46 16 we premark some of these exhibits.

11:38:43 17 A. It doesn't say anything unless I'm  
11:38:45 18 looking over top of it, about any vote for  
11:38:48 19 stockholders to, to -- on the merger.

11:38:52 20 Q. So my question for you, Mr.  
11:38:53 21 Zoellner, is independently of the document, do  
11:38:57 22 you believe that you were in favor of Oak Hills  
11:38:59 23 maintaining its independence, some type of  
11:39:02 24 sale, or something else on or about March 25th,  
11:39:05 25 1999?

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11:39:47 1 Q. I think I'm going to be able to  
11:39:49 2 help, Mr. Zoellner. Mr. Zoellner, please take  
11:39:52 3 a look at what is marked as Zoellner Deposition  
11:39:55 4 Exhibit 8.

11:41:04 5 A. Okay. That says it right there.

11:41:06 6 Q. Mr. Zoellner --

11:41:08 7 A. Four of them for and three of them  
11:41:09 8 against.

11:41:10 9 Q. Have you seen Zoellner Deposition  
11:41:12 10 Exhibit 8 before?

11:41:13 11 A. Yes.

11:41:14 12 Q. Are you familiar with it?

11:41:14 13 A. Yes.

11:41:15 14 Q. Do you recognize it?

11:41:16 15 A. Yes.

11:41:17 16 Q. What is Zoellner Deposition  
11:41:19 17 Exhibit 8?

11:41:21 18 A. It's the minutes of the OHSL  
11:41:27 19 Financial Corp.

11:41:28 20 Q. For April 20th, 1999, correct?

11:41:31 21 A. That is correct.

11:41:32 22 Q. And did you attend a special  
11:41:34 23 meeting of the Board of Directors of OHSL  
11:41:37 24 Financial Corp on or about April 20th, 1999?

11:41:40 25 A. That's what it says there.

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11:41:42 1 Q. And what was the purpose of that  
 11:41:43 2 special meeting?  
 11:41:44 3 A. To have the ad hoc committee  
 11:41:46 4 report.  
 11:41:47 5 Q. Okay. Now, Mr. Zoellner, without  
 11:41:49 6 just reading what's in the document, is there  
 11:41:52 7 anything that you remember independently about  
 11:41:55 8 this April 20th, 1999 meeting?  
 11:42:00 9 A. No. I don't remember it, no.  
 11:42:06 10 Q. Okay. Do you remember voting at  
 11:42:07 11 this meeting?  
 11:42:10 12 A. I remember voting. I can't say --  
 11:42:12 13 well, I was there and I voted, yes, so I --  
 11:42:18 14 this refreshed my memory and says I did.  
 11:42:18 15 Q. Okay. How did you vote?  
 11:42:20 16 A. I voted against the merger.  
 11:42:20 17 Q. What merger?  
 11:42:21 18 A. Or, or the ad hoc committee going  
 11:42:24 19 ahead with discussions of these -- of a merger  
 11:42:37 20 or a buy-out or sellout. It says right here, I  
 11:42:40 21 think, motion carried with four votes for,  
 11:42:45 22 three against, Hanauer, Herron and Zoellner,  
 11:42:48 23 with Mr. Brinker not voting because he would  
 11:42:52 24 only vote if there was a tie.  
 11:42:54 25 Q. Okay. Now, this vote taken on

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11:44:08 1 Q. Okay. What's your understanding  
 11:44:09 2 of the word unanimous?  
 11:44:12 3 MR. BURKE: Objection. Calls for  
 11:44:12 4 speculation. You may answer.  
 11:44:14 5 A. I would say everybody in favor of  
 11:44:17 6 the same thing, unanimously agreed the same.  
 11:44:22 7 Q. Okay.  
 11:44:23 8 A. It doesn't say that in there. It  
 11:44:24 9 says that we're split four and three.  
 11:44:27 10 Q. Okay. And Mr. Brinker not voting?  
 11:44:30 11 A. That is what it says here.  
 11:44:33 12 Q. Okay. Would it be fair to say  
 11:44:35 13 that up to and including April 20th, 1999, you  
 11:44:38 14 were not in favor of continued merger  
 11:44:42 15 negotiations with whomever?  
 11:44:44 16 MR. BURKE: Objection.  
 11:44:45 17 Mischaracterizes prior testimony. You may  
 11:44:47 18 answer.  
 11:44:47 19 A. No. It wasn't that I was against  
 11:44:49 20 talking to anybody, I was against the merger.  
 11:44:52 21 Q. Okay. What merger were you  
 11:44:53 22 against on or about April 20th, 1999?  
 11:44:56 23 A. I do not know who they were -- who  
 11:44:58 24 was in there. I looked over the top of it, but  
 11:45:01 25 I don't know who I was --

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11:42:55 1 April 20th, 1999, was not unanimous, correct?  
 11:42:59 2 A. That is true. It shows four of us  
 11:43:01 3 were -- four were for and three were against.  
 11:43:05 4 Q. And for the vote to be unanimous,  
 11:43:07 5 each of the directors who were there would have  
 11:43:10 6 to vote the same way, correct?  
 11:43:13 7 A. That is correct, to be unanimous.  
 11:43:15 8 Q. Right. So for this vote to be  
 11:43:17 9 unanimous, all eight of the directors would  
 11:43:20 10 have had to vote in favor of the resolution or  
 11:43:24 11 against the resolution; is that correct?  
 11:43:26 12 MR. BURKE: Objection.  
 11:43:26 13 Mischaracterizes prior testimony. You may  
 11:43:28 14 answer.  
 11:43:41 15 A. The chairman of the Board only  
 11:43:43 16 votes if there's a tie, is that -- that's  
 11:43:47 17 correct. The chairman, which was Norb Brinker,  
 11:43:51 18 he didn't vote, I don't think. I think it said  
 11:43:54 19 it in there, Brinker not voting. That's  
 11:43:57 20 because he was chairman and he only votes if  
 11:44:00 21 there's a tie.  
 11:44:02 22 Q. Okay. Why --  
 11:44:02 23 A. And we had a four to three so  
 11:44:04 24 there wasn't a tie. That's why it says here  
 11:44:07 25 not voting.

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11:45:05 1 Q. Were you against the proposal to  
 11:45:07 2 hire McDonald & Company?  
 11:45:20 3 A. I don't, I don't recall that.  
 11:45:23 4 Q. Are you familiar with an entity  
 11:45:24 5 known as McDonald & Company?  
 11:45:27 6 A. Yes.  
 11:45:27 7 Q. Okay. What are they?  
 11:45:31 8 A. Well, they helped to get a -- find  
 11:45:35 9 a buyer and, and carry the full transaction  
 11:45:39 10 through on a -- on a merger or sale.  
 11:45:44 11 Q. And you did not want to retain the  
 11:45:46 12 services of McDonald & Company on or about  
 11:45:50 13 April 20th, 1999?  
 11:45:52 14 A. Not at this time.  
 11:45:53 15 Q. Okay. Why not?  
 11:45:54 16 A. Because I, I liked where we were  
 11:45:57 17 and we were -- we were making money for the  
 11:46:02 18 stockholders. Everything was going fine and I  
 11:46:05 19 didn't see any reason why, but then it came to  
 11:46:09 20 my attention that it would be best for the  
 11:46:11 21 stockholders if we did and --  
 11:46:15 22 Q. Did --  
 11:46:18 23 MR. BURKE: Go ahead and finish  
 11:46:18 24 your answer, Mr. Zoellner.  
 11:46:20 25 A. And it could have been that we

11:46:22 1 maybe should have done it even earlier. That's  
 11:46:25 2 hindsight, but at the time it was best to do  
 11:46:27 3 it. It was in -- that's why I changed my vote  
 11:46:30 4 and --

11:46:33 5 MR. BRAUTIGAM: Move to strike  
 11:46:34 6 nonresponsive portions. Mr. Zoellner, if you  
 11:46:36 7 could limit your answer to something related to  
 11:46:38 8 my question, I'd appreciate it.

11:46:40 9 MR. BURKE: You know, there's no  
 11:46:41 10 need to try to insult the witness, Mr.

11:46:43 11 Brautigam. Mr. Zoellner, you keep doing  
 11:46:46 12 exactly what you have been doing, which is  
 11:46:47 13 answering the questions to the best of your  
 11:46:50 14 ability. Don't worry about his motions to  
 11:46:53 15 strike, you just answer as well as you can.

11:46:53 16 MR. BRAUTIGAM: Read back the  
 11:46:53 17 question and answer.

11:47:23 18 (Record read by Reporter.)

11:47:23 19 BY MR. BRAUTIGAM:

11:47:23 20 Q. Mr. Zoellner, you said that you  
 11:47:24 21 liked where you were on or about April 20th,  
 11:47:28 22 and you were making money. Do you remember  
 11:47:29 23 that testimony?

11:47:30 24 A. I just said that, yes.

11:47:31 25 Q. Okay. Did you continue to make

11:47:33 1 money in 1999?

11:47:36 2 A. Yes, we continued.

11:47:38 3 Q. That never changed, correct?

11:47:42 4 MR. BURKE: Objection to form.

11:47:45 5 A. I can't answer that for sure

11:47:46 6 either way. I don't remember what the  
 11:47:49 7 statements showed.

11:47:51 8 Q. On December 2nd, 1999, the day  
 11:47:54 9 before the merger was finalized, was Oak Hills  
 11:47:57 10 a profitable company?

11:47:59 11 A. Yes.

11:47:59 12 Q. Was it a strong company?

11:48:01 13 A. Yes.

11:48:01 14 Q. Did it need to be sold?

11:48:04 15 A. No.

11:48:08 16 Q. Okay. It's no secret that Mr.

11:48:09 17 Huckle was very much in favor of a sale of Oak  
 11:48:12 18 Hills, correct?

11:48:13 19 MR. BURKE: Objection.

11:48:13 20 A. Correct.

11:48:14 21 Q. And Mr. Huckle had had that view  
 11:48:16 22 for some years, correct?

11:48:18 23 A. Yes, that's correct.

11:48:19 24 Q. And it's no secret that Mr.

11:48:25 25 Hanauer was a proponent of remaining

11:48:25 1 independent, correct?

11:48:26 2 A. Yeah. Well, that shows that in  
 11:48:28 3 the minutes here that Hanauer and Herron and  
 11:48:30 4 myself were in favor of staying -- I should  
 11:48:35 5 just answer yes or no. I'm sorry.

11:48:37 6 MR. BURKE: You don't have to  
 11:48:37 7 answer yes or no, Howard. If you care to  
 11:48:39 8 explain, you're free to do so.

11:48:42 9 A. Okay.

11:48:42 10 Q. Mr. Huckle's view pro sale was  
 11:48:45 11 generally known by the Oak Hills Board,  
 11:48:47 12 correct?

11:48:47 13 MR. BURKE: Objection to form.

11:48:48 14 A. Yes.

11:48:49 15 Q. And Mr. Hanauer's view against any  
 11:48:51 16 such sale was also generally known, correct?

11:48:54 17 A. Yes.

11:48:54 18 Q. And that view is reflected in the  
 11:48:56 19 minutes of April 20th, 1999, correct?

11:48:59 20 A. That is correct.

11:49:00 21 Q. And would it be fair to say that  
 11:49:03 22 without reading what you have here, you don't  
 11:49:06 23 remember anything about Mr. Huckle's  
 11:49:08 24 presentation on that day, correct?

11:49:10 25 A. No, I don't remember.

11:49:12 1 Q. And you don't remember anything  
 11:49:14 2 about Mr. Tenover's presentation on that date,  
 11:49:17 3 correct?

11:49:17 4 A. No, I don't.

11:49:18 5 Q. And you don't remember anything  
 11:49:19 6 about Mr. McKiernan's presentation on that day?

11:49:22 7 A. No, other than what's on the  
 11:49:23 8 minutes there.

11:49:24 9 Q. Now, when you attended Board  
 11:49:26 10 meetings, did you take notes?

11:49:27 11 A. No.

11:49:28 12 Q. You never took notes during the  
 11:49:29 13 entire time Oak Hills was a public company?

11:49:32 14 MR. BURKE: Objection. Asked and  
 11:49:33 15 answered.

11:49:37 16 A. Well, I, I don't know. I  
 11:49:39 17 probably -- probably when we had the minutes or  
 11:49:42 18 there was some comment or that, I might have  
 11:49:45 19 written something alongside them, but I don't  
 11:49:48 20 remember. I don't remember.

11:49:49 21 Q. Okay. But you probably took notes  
 11:49:50 22 at some point in 1999; is that your testimony?

11:49:52 23 MR. BURKE: Objection. That is  
 11:49:53 24 not his testimony. If you would like to read  
 11:49:55 25 it back, we can read it back.

11:49:57 1 MR. BRAUTIGAM: Jim, we don't need  
 11:49:59 2 speaking objections, we're doing fine.  
 11:50:01 3 MR. BURKE: Objection.  
 11:50:02 4 Mischaracterizes the prior testimony. Asked  
 11:50:04 5 and answered.  
 11:50:04 6 BY MR. BRAUTIGAM:  
 11:50:04 7 Q. Mr. Zoellner, let me ask the  
 11:50:05 8 question a different way. During 1999, did you  
 11:50:08 9 ever take notes at OHSL Board meetings?  
 11:50:11 10 A. I cannot say that, I do not know.  
 11:50:13 11 I do not know.  
 11:50:15 12 Q. Okay. Did you retain a file of  
 11:50:17 13 OHSL related documents at your home?  
 11:50:21 14 A. No, just ones that they might give  
 11:50:24 15 us that I had at my home, like they'd give us a  
 11:50:27 16 copy of the minutes or something.  
 11:50:29 17 Q. Okay. Do you think it's possible  
 11:50:30 18 that you had some notes on these documents?  
 11:50:34 19 MR. BURKE: Objection.  
 11:50:34 20 Mischaracterizes the --  
 11:50:36 21 A. I, I do not know.  
 11:50:37 22 Q. You don't know one way or the  
 11:50:38 23 other?  
 11:50:39 24 A. No.  
 11:50:40 25 Q. Okay.

11:51:34 1 the exact date. I'm trying to determine --  
 11:51:36 2 A. Yeah, well --  
 11:51:38 3 Q. -- whether it was before or after  
 11:51:39 4 the merger.  
 11:51:39 5 MR. BURKE: Objection.  
 11:51:40 6 A. I don't know.  
 11:51:40 7 Q. You testified --  
 11:51:41 8 A. It was right there. I don't know  
 11:51:42 9 when. It could have been either side of it.  
 11:51:45 10 Q. Okay. How much on either side?  
 11:51:47 11 A. I probably would say it was right  
 11:51:49 12 after the merger.  
 11:51:49 13 Q. Okay. And you --  
 11:51:51 14 A. I don't know whether there is any  
 11:51:53 15 way I can prove that to myself or not.  
 11:51:56 16 Q. Okay. Now, what was the purpose  
 11:51:57 17 in shredding these documents?  
 11:51:59 18 A. I didn't need them around anymore  
 11:52:00 19 because we were going to be part of Provident.  
 11:52:03 20 We were no longer going to be directors.  
 11:52:05 21 Q. Okay.  
 11:52:06 22 A. There was no need to keep these.  
 11:52:10 23 Q. Did you understand at the time you  
 11:52:14 24 shredded the documents that there was some  
 11:52:16 25 litigation pending in a state court?

11:50:40 1 A. But -- because I shredded all of  
 11:50:44 2 those, everything. I don't have a thing.  
 11:50:47 3 Q. Okay. When did you shred these  
 11:50:49 4 documents?  
 11:50:53 5 A. I don't know the exact date, but  
 11:50:54 6 it was right after the merger.  
 11:51:00 7 Q. Let me --  
 11:51:00 8 A. I think it was right after the  
 11:51:02 9 merger when I did that.  
 11:51:06 10 Q. Okay. And did you have a shredder  
 11:51:07 11 at your house?  
 11:51:08 12 A. No, I went and bought one.  
 11:51:10 13 Q. For this specific purpose?  
 11:51:11 14 A. Yes. And also for my accounting  
 11:51:14 15 records, because I had retired from my  
 11:51:17 16 accounting business, so it was a double thing.  
 11:51:19 17 Q. But at some time after December  
 11:51:21 18 3rd, 1999, the day of the merger, you went out  
 11:51:24 19 and bought a shredder, correct?  
 11:51:27 20 MR. BURKE: Objection.  
 11:51:27 21 Mischaracterization.  
 11:51:28 22 A. I don't know of the date. I don't  
 11:51:29 23 know. I don't know the exact date when I  
 11:51:31 24 bought it.  
 11:51:32 25 Q. Mr. Zoellner, I'm not asking for

11:52:18 1 A. No. I don't remember any of that,  
 11:52:20 2 no.  
 11:52:20 3 Q. Okay. Do you --  
 11:52:21 4 A. As far as I was concerned, there  
 11:52:22 5 wasn't any litigation. I shredded them before  
 11:52:28 6 that.  
 11:52:28 7 Q. What do you mean, as far as you're  
 11:52:30 8 concerned?  
 11:52:31 9 A. Well, as far as I remember, that  
 11:52:32 10 was -- it was done before the -- I don't --  
 11:52:40 11 you --  
 11:52:41 12 Q. Are you familiar with any  
 11:52:43 13 litigation that took place in a state court?  
 11:52:47 14 A. No.  
 11:52:53 15 Q. Did any of your attorneys ever ask  
 11:52:54 16 you to produce documents in the state court  
 11:52:58 17 action?  
 11:53:01 18 A. Well, I said no to the state, but  
 11:53:03 19 there was some discussion, something about they  
 11:53:05 20 gave us this information and I -- I just don't  
 11:53:08 21 remember, I'm sorry to say.  
 11:53:12 22 Q. Did you receive some type of  
 11:53:13 23 document request, some document calling for you  
 11:53:16 24 to produce your records?  
 11:53:18 25 A. No, no.

11:53:19 1 Q. You never received anything like  
 11:53:20 2 that?  
 11:53:20 3 A. No.  
 11:53:20 4 Q. Did you receive a document request  
 11:53:22 5 in this case, the Thiemann action?  
 11:53:30 6 A. The one you just gave me to read  
 11:53:32 7 was all. A majority of it was if you had any  
 11:53:37 8 documents, to turn them over -- to bring them  
 11:53:40 9 to the meeting, but that's the only thing that  
 11:53:44 10 there was and I didn't have any.  
 11:53:46 11 MR. BURKE: Okay. I want the  
 11:53:47 12 record to reflect that the witness looked at  
 11:53:49 13 Mr. Burke and Mr. Burke nodded his head and  
 11:53:51 14 then the witness said yes.  
 11:53:53 15 MR. BURKE: Certainly. Because  
 11:53:55 16 it's the truth, Mr. Brautigam.  
 11:53:57 17 A. Because I was asking if that's the  
 11:53:58 18 document he gave me.  
 11:53:59 19 Q. And you didn't have any documents  
 11:54:01 20 because you had already shredded these  
 11:54:03 21 documents, to the best of your recollection, at  
 11:54:05 22 some point after the merger on December 3rd,  
 11:54:07 23 1999?  
 11:54:09 24 MR. BURKE: Objection.  
 11:54:09 25 Mischaracterizes the testimony as you know, Mr.

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11:55:58 1 MR. BURKE: Objection to form.  
 11:55:59 2 Mischaracterizes the record. You may answer.  
 11:56:02 3 A. I would say it's split. Three and  
 11:56:05 4 four is a split.  
 11:56:06 5 Q. Okay. What was Mr. Brinker's  
 11:56:07 6 opinion as to whether or not McDonald should be  
 11:56:09 7 hired at this point?  
 11:56:10 8 A. Oh, I, I do not know for sure what  
 11:56:13 9 his opinion was.  
 11:56:15 10 Q. Do you suspect one way or another?  
 11:56:17 11 A. I suspect, yes.  
 11:56:19 12 Q. Okay.  
 11:56:19 13 MR. BURKE: Objection.  
 11:56:19 14 Q. What do you suspect?  
 11:56:20 15 MR. BURKE: Objection. Calls for  
 11:56:21 16 speculation. If you know, you know. You don't  
 11:56:23 17 have to speculate.  
 11:56:25 18 A. Okay. I don't know. I don't know  
 11:56:26 19 what his feeling was.  
 11:56:28 20 Q. Do you believe that you could form  
 11:56:30 21 an opinion with respect to Mr. Brinker's  
 11:56:32 22 opinion on or about April 20th of 1999?  
 11:56:36 23 MR. BURKE: Objection to form.  
 11:56:37 24 Asked and answered.  
 11:56:40 25 A. No, I don't know. That's -- I do

11:54:11 1 Brautigam. He does not recall the date.  
 11:54:14 2 MR. BRAUTIGAM: Jim, I didn't ask  
 11:54:15 3 for the date. We're doing fine, Jim. The  
 11:54:18 4 record speaks for itself. Can I have an answer  
 11:54:20 5 to my question?  
 11:54:21 6 MR. BURKE: Do you recall the  
 11:54:21 7 question?  
 11:54:22 8 MR. BRAUTIGAM: Lee Ann will read  
 11:54:23 9 it back.  
 11:54:23 10 (Record read by Reporter.)  
 11:54:38 11 MR. BURKE: Objection.  
 11:54:39 12 Mischaracterizes the record, you may answer.  
 11:54:48 13 A. I have, that's true.  
 11:54:48 14 BY MR. BRAUTIGAM:  
 11:54:53 15 Q. Okay. Mr. Zoellner, I'm handing  
 11:54:54 16 you Zoellner Deposition Exhibit 9 and I ask you  
 11:54:58 17 to take a look at it. Mr. Zoellner, have you  
 11:55:39 18 seen these minutes before?  
 11:55:40 19 A. It says that I was at that Board  
 11:55:42 20 meeting, so I have seen them.  
 11:55:44 21 Q. Okay. Let me direct your  
 11:55:45 22 attention back to the meeting of April 20th.  
 11:55:48 23 Would you say that the Board was split because  
 11:55:51 24 you had four votes in favor of hiring McDonald  
 11:55:55 25 and three against and Mr. Brinker not voting?

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11:56:44 1 not know.  
 11:56:45 2 Q. Okay. Was there heated discussion  
 11:56:46 3 at the special meeting on April 20th, 1999?  
 11:56:50 4 How would you describe what took place?  
 11:56:52 5 MR. BURKE: Objection to form.  
 11:56:54 6 A. On April the 22nd?  
 11:56:56 7 Q. April the 20th.  
 11:56:59 8 A. Gee, I don't know whether there  
 11:57:02 9 was any heated discussion. I know there was a  
 11:57:03 10 discussion.  
 11:57:04 11 Q. How would you describe the  
 11:57:05 12 relationship between Mr. Huckle and Mr. Hanauer?  
 11:57:13 13 A. Well, I think they both felt kind  
 11:57:15 14 of the same way as far as they were in favor of  
 11:57:17 15 it, which the minutes show here that they were  
 11:57:20 16 in favor of a merger or, or a sellout.  
 11:57:26 17 Q. Could you direct --  
 11:57:27 18 MR. BURKE: Please let the witness  
 11:57:29 19 finish his answer.  
 11:57:30 20 MR. BRAUTIGAM: Jim --  
 11:57:31 21 MR. BURKE: Mr. Brautigam --  
 11:57:32 22 MR. BRAUTIGAM: You don't have to  
 11:57:32 23 scream at me. I thought he was finished.  
 11:57:35 24 MR. BURKE: Mr. Brautigam, he was  
 11:57:36 25 still talking. Don't interrupt the witness.



11:57:38 1 And I'd like you to finish. Read the question  
11:57:41 2 back. Let the gentleman finish his answer and  
11:57:45 3 -- let the man finish his answers. I know you  
11:57:49 4 want to get things moving.

11:57:51 5 MR. BURKE: Jim, it's not a  
11:57:52 6 question of getting things moving, we're doing  
11:57:54 7 fine.

11:57:55 8 MR. BURKE: I agree.

11:57:55 9 MR. BRAUTIGAM: Mr. Zoellner, I  
11:57:57 10 didn't mean to interrupt you, I thought you  
11:57:59 11 were finished. Let's have the question read  
11:58:00 12 back and your answer, then you can add to it or  
11:58:02 13 you can say you're finished or whatever you'd  
11:58:04 14 like.

11:58:04 15 (Record read by Reporter.)

11:58:30 16 BY MR. BRAUTIGAM:

11:58:31 17 Q. Okay. And Mr. Zoellner, could you  
11:58:32 18 please show me in the minutes where Mr. Huckle  
11:58:36 19 and Mr. Hanauer were both in favor of the  
11:58:38 20 merger, the April 20th, 1999 minutes?

11:58:49 21 MR. BURKE: Wait a minute, he's  
11:58:49 22 talking about the April 20th minutes.

11:58:52 23 A. Here is the 20th.

11:58:55 24 MR. BURKE: That is the 22nd.

11:58:56 25 MR. BRAUTIGAM: Exhibit 8.

12:01:14 1 way it was. And they each expressed himself to  
12:01:17 2 that extent.

12:01:19 3 MR. BURKE: We've been going two  
12:01:20 4 hours roughly, I'd like to take a break.

12:01:23 5 MR. BRAUTIGAM: Certainly.

12:01:23 6 (Brief recess.)

12:12:04 7 BY MR. BRAUTIGAM:

12:12:05 8 Q. Mr. Zoellner, I understand you had  
12:12:06 9 a conversation with Mr. Burke during the time I  
12:12:09 10 was out of the room. Is that correct?

12:12:12 11 MR. BURKE: Yes. We discussed the  
12:12:14 12 war. We just talked about World War II, pardon  
12:12:17 13 me.

12:12:19 14 Q. Was there anyone else in the room  
12:12:23 15 during that conversation?

12:12:23 16 A. This gentleman right here.

12:12:25 17 Q. Who is "this gentleman" that you  
12:12:26 18 pointed to?

12:12:27 19 A. I do not know.

12:12:28 20 MR. MOORE: For the record, that's  
12:12:29 21 Christopher Moore.

12:12:30 22 Q. Do you know what his function is  
12:12:32 23 at the deposition?

12:12:32 24 A. No.

12:12:35 25 Q. With respect to this conversation,

11:58:58 1 MR. BURKE: Exhibit 8.

11:58:59 2 A. Oh, here.

11:59:45 3 Q. Mr. Zoellner, you're free to look  
11:59:46 4 at the document wherever you want, but if you  
11:59:48 5 turn the page, I believe the voting is  
11:59:50 6 reflected there in the first paragraph.

12:00:12 7 A. Well, that was to approve the  
12:00:14 8 hiring of McDonald to conduct the study for us.  
12:00:18 9 You were saying -- well, Herron -- not Herron.

12:00:26 10 Q. Hanauer?

12:00:27 11 A. Hanauer -- no, no.

12:00:29 12 MR. MOORE: Huckle?

12:00:30 13 A. Tenoever and -- no, Huckle and  
12:00:32 14 McKiernan were in -- were in favor of it.  
12:00:35 15 That's what it says on this, this here, of  
12:00:40 16 going ahead, so to end up with a 4-3 majority  
12:00:46 17 to go ahead with McDonald to get some more  
12:00:50 18 information. It was just information, it  
12:00:57 19 wasn't to sell.

12:00:57 20 Q. Okay. Mr. Zoellner, how would you  
12:00:57 21 generally describe the relationship as Board  
12:01:00 22 members between Mr. Huckle and Mr. Hanauer  
12:01:04 23 during 1999?

12:01:07 24 A. Well, Huckle was in favor of  
12:01:09 25 selling, Hanauer was in favor of staying the

12:12:37 1 please tell me what you said, if anything, what  
12:12:40 2 Mr. Burke said, and what Mr. Moore said.

12:12:43 3 MR. MOORE: I'll object.

12:12:45 4 MR. BURKE: You can talk about  
12:12:45 5 what -- the conversation.

12:12:47 6 MR. MOORE: You can go ahead, but  
12:12:48 7 I've got to tell you this was like -- go ahead  
12:12:51 8 and answer. Mike, that's just --

12:12:53 9 A. I talked about World War II, what  
12:12:55 10 I did. They asked was I in World War II and I  
12:12:58 11 told them yes, that I was a Navy pilot,  
12:13:01 12 graduated from Pensacola, Florida, spent four  
12:13:04 13 years in the Pacific. Told them that the  
12:13:06 14 Seabees were great guys -- first of all the  
12:13:09 15 marines, the marines were taking an island, the  
12:13:12 16 Seabees come in and put us a landing strip in  
12:13:15 17 and we'd fly in. That was about the extent.

12:13:18 18 MR. MOORE: There was another  
12:13:19 19 thing. Didn't you tell me you would never  
12:13:21 20 dream of being a lawyer?

12:13:22 21 A. Yes. I don't like controversy so  
12:13:25 22 I don't want to be a lawyer.

12:13:26 23 Q. Okay. And you did not speak about  
12:13:28 24 the substance of the case?

12:13:29 25 A. No.



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12:13:31 1 Q. Okay. Directing your attention to  
 12:13:32 2 Zoellner Exhibit 9. This is a regular meeting  
 12:13:37 3 on or about April 22nd, 1999, correct?  
 12:13:46 4 A. This is a regular meeting of the  
 12:13:49 5 Board of Directors of Oak Hills Financial  
 12:13:51 6 Corporation.  
 12:13:54 7 Q. And how would you describe this  
 12:13:55 8 meeting? Was it tense, was it relaxed, was it  
 12:13:59 9 something else? How would you describe it?  
 12:14:01 10 A. Gosh, I can't answer that, I don't  
 12:14:02 11 know.  
 12:14:06 12 Q. Now, at this point, April 22nd,  
 12:14:08 13 1999, you were still against the engagement of  
 12:14:12 14 McDonald and you were in favor of the continued  
 12:14:15 15 independence of OHSL, correct?  
 12:14:17 16 MR. BURKE: Objection. You may  
 12:14:18 17 answer if you know.  
 12:14:19 18 A. Does it say it here? I don't know  
 12:14:20 19 that. The minutes have to say what, what I did  
 12:14:24 20 or how I voted. This doesn't say anything  
 12:14:30 21 about votes on the 22nd, does it? I don't see  
 12:14:34 22 it.  
 12:14:34 23 Q. I don't believe it does, but I  
 12:14:36 24 still want to know your position, if you  
 12:14:38 25 remember it.

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12:17:23 1 Q. And --  
 12:17:24 2 A. Because he was chairman.  
 12:17:25 3 Q. Okay. In the other minutes, it  
 12:17:26 4 doesn't say that Mr. Brinker presided, does it?  
 12:17:30 5 MR. BURKE: Objection. What  
 12:17:31 6 minutes are you referring to?  
 12:17:33 7 MR. BRAUTIGAM: The other ones  
 12:17:35 8 we've looked at so far.  
 12:17:37 9 MR. BURKE: Objection. You can  
 12:17:39 10 answer, Mr. Zoellner.  
 12:17:41 11 A. I don't know. I'd have to look  
 12:17:42 12 back at all of those minutes that we've been  
 12:17:45 13 referring to.  
 12:17:45 14 Q. Generally speaking --  
 12:17:47 15 A. They would speak for themselves  
 12:17:48 16 whether Norb was presiding or not.  
 12:17:51 17 Q. Generally speaking, how did Oak  
 12:17:53 18 Hills Financial Corporation Board meetings run  
 12:17:57 19 in 1999?  
 12:17:59 20 A. How did they run?  
 12:18:03 21 Q. In other words, isn't it fair to  
 12:18:04 22 say that Mr. Brinker called the meeting to  
 12:18:07 23 order and then turned it over to Ken?  
 12:18:10 24 MR. BURKE: Objection. Calls for  
 12:18:11 25 speculation. You may answer.

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12:14:39 1 A. I don't, I don't remember. These  
 12:14:40 2 dates are vague to me, I don't know.  
 12:14:44 3 Q. Okay. Let me hand you Zoellner  
 12:14:46 4 Deposition Exhibit 10. Have you seen that  
 12:14:53 5 document before?  
 12:14:56 6 A. I was there so I have seen it.  
 12:15:03 7 Q. Okay. Now, this was a  
 12:15:05 8 reorganization meeting; is that right?  
 12:15:11 9 A. That's what it says.  
 12:15:13 10 Q. What's the purpose of a  
 12:15:14 11 reorganization meeting?  
 12:15:17 12 A. I just had that thought myself.  
 12:15:20 13 Why would we be reorganizing?  
 12:17:05 14 Q. Mr. Zoellner, if you don't know,  
 12:17:07 15 you can just say that.  
 12:17:08 16 A. I don't know what this is. I am  
 12:17:11 17 not following. Why a reorganization? I don't  
 12:17:13 18 know.  
 12:17:13 19 Q. Okay. Mr. Zoellner, it says that  
 12:17:15 20 Norbert G. Brinker presided at the meeting.  
 12:17:20 21 A. Yes.  
 12:17:20 22 Q. Do you see that?  
 12:17:20 23 A. Yes.  
 12:17:21 24 Q. Was that unusual?  
 12:17:22 25 A. No.

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12:18:15 1 A. He would call the meeting to  
 12:18:17 2 order, but I do not remember him turning it  
 12:18:19 3 over to Ken Hanauer.  
 12:18:23 4 Q. Do you remember Mr. Brinker  
 12:18:23 5 running these meetings?  
 12:18:25 6 A. Yes.  
 12:18:30 7 Q. Okay. Do you remember anything  
 12:18:31 8 about the April 22nd, 1999 meeting other than  
 12:18:34 9 what's reflected in the minutes here?  
 12:18:36 10 A. No.  
 12:18:43 11 Q. I'm handing you Zoellner 11, I ask  
 12:18:47 12 you to take a look at it. Have you seen this  
 12:18:59 13 document before?  
 12:19:14 14 A. I do not know --  
 12:19:20 15 Q. Now, I --  
 12:19:20 16 A. -- because I wasn't there. I was  
 12:19:20 17 unable to attend, so it would be that -- I  
 12:19:22 18 don't know whether I got one later on or not.  
 12:19:24 19 Q. Well, wasn't that --  
 12:19:26 20 A. But I was not at the meeting.  
 12:19:27 21 Q. Okay. But wasn't it the practice  
 12:19:30 22 of Oak Hills Financial Corporation to pass out  
 12:19:32 23 the minutes at the next meeting?  
 12:19:34 24 A. Yes, if you missed.  
 12:19:40 25 Q. Okay. Up to this point in time,

12:19:41 1 who did you consider your lawyer to be as an  
 12:19:43 2 Oak Hills Board member?  
 12:19:45 3 MR. MOORE: Objection.  
 12:19:46 4 A. Who our lawyer was?  
 12:19:47 5 Q. Yes.  
 12:19:49 6 A. For -- that's what you're  
 12:19:55 7 referring to? Are you referring to loan  
 12:19:57 8 closings or --  
 12:19:58 9 Q. No, with respect to the business  
 12:20:01 10 of OHSL Financial Corporation and its Board.  
 12:20:24 11 A. I don't remember.  
 12:20:24 12 Q. Does the name Chuck Hertlein ring  
 12:20:28 13 a bell?  
 12:20:28 14 A. No.  
 12:20:29 15 MR. MOORE: Objection.  
 12:20:30 16 Q. Does the firm Dinsmore & Shohl  
 12:20:32 17 ring a bell?  
 12:20:32 18 A. Yes.  
 12:20:33 19 MR. MOORE: Objection.  
 12:20:34 20 Q. Do you understand that Dinsmore &  
 12:20:36 21 Shohl are defendants in this action?  
 12:20:38 22 A. Yes. I think they -- I heard  
 12:20:40 23 that.  
 12:20:42 24 Q. Okay. What is your understanding  
 12:20:43 25 of why they're defendants?

12:21:54 1 MR. BURKE: Objection. Asked and  
 12:21:54 2 answered.  
 12:21:55 3 A. Hertlein. I recognize the name,  
 12:21:57 4 but I couldn't tell you -- no, I'm not that  
 12:22:00 5 familiar that I would know him.  
 12:22:01 6 Q. Did he ever perform work for the  
 12:22:03 7 OHSL Board?  
 12:22:05 8 A. I do not know.  
 12:22:12 9 Q. Okay. Do you remember why you  
 12:22:13 10 were unable to make this meeting on May 6th,  
 12:22:16 11 1999?  
 12:22:28 12 A. I don't know.  
 12:22:29 13 Q. Okay.  
 12:22:29 14 A. I don't know why.  
 12:22:33 15 Q. Were you still against any  
 12:22:36 16 proposed transaction at this point, May 6th,  
 12:22:40 17 1999?  
 12:22:41 18 MR. BURKE: Objection, cumulative.  
 12:22:43 19 A. I do not know. I don't know  
 12:22:46 20 whether I was for it or against it at this  
 12:22:48 21 point.  
 12:22:53 22 Q. Okay. For or against what?  
 12:22:55 23 A. You said was I for or against a  
 12:22:59 24 merger. Isn't that what you just said to me?  
 12:23:04 25 Q. Close. I don't believe I used the

12:20:44 1 A. I don't know.  
 12:20:46 2 Q. Does the name Cliff Roe ring a  
 12:20:49 3 bell?  
 12:20:50 4 A. Yes.  
 12:20:50 5 Q. Okay. Who is Cliff Roe?  
 12:20:51 6 A. He's the attorney with the --  
 12:20:54 7 isn't he in your office? No, you're at  
 12:20:57 8 Keating. No, I'm sorry. Cliff Roe, yes.  
 12:21:00 9 Q. Was Cliff Roe ever the Board's  
 12:21:03 10 attorney, the Oak Hills' Board's attorney?  
 12:21:07 11 A. I don't -- I do not know him being  
 12:21:10 12 designated as Oak Hills' Board's attorney. He  
 12:21:14 13 was just a -- occasionally they would call on  
 12:21:17 14 him for some advice, but I never referred to  
 12:21:20 15 him as Oak Hills' Board's attorney.  
 12:21:23 16 Q. Who called on Mr. Roe for advice?  
 12:21:26 17 MR. MOORE: Objection.  
 12:21:31 18 A. I don't know. If -- probably if  
 12:21:33 19 anybody, it would be Ken Hanauer because he was  
 12:21:36 20 our managing officer/CEO. And anybody on the  
 12:21:44 21 Board would say check this out, Ken, or check  
 12:21:46 22 this out, Ken. Do this, do that.  
 12:21:48 23 Q. Mr. Zoellner, I forget, were you  
 12:21:50 24 familiar with a guy named Chuck Hertlein at  
 12:21:53 25 Dinsmore & Shohl?

12:23:06 1 word "merger," but that's okay. Now, did you  
 12:23:09 2 ever come to believe that this transaction was  
 12:23:12 3 going to happen, whether it was -- whether you  
 12:23:16 4 were in favor of it or against it?  
 12:23:18 5 MR. BURKE: Objection to form,  
 12:23:19 6 ambiguous.  
 12:23:22 7 A. No. No, I wouldn't say that it  
 12:23:25 8 was going to happen. It just took a majority  
 12:23:29 9 of the vote. Whatever the majority of the vote  
 12:23:32 10 was, that's the way it would go.  
 12:23:34 11 Q. The majority of what vote?  
 12:23:35 12 A. Of the directors, should submit it  
 12:23:40 13 to the stockholders or not on a merger.  
 12:23:43 14 Q. Okay. But you didn't use the term  
 12:23:44 15 majority of the directors voted in favor of it,  
 12:23:47 16 did you?  
 12:23:48 17 MR. BURKE: What? Objection to  
 12:23:49 18 form.  
 12:23:53 19 Q. Okay. In Defendant's Exhibit 1,  
 12:23:55 20 you talk about the vote by your Board of  
 12:23:59 21 Directors being unanimously approved.  
 12:24:02 22 MR. BURKE: You say "you." You're  
 12:24:04 23 referring to him?  
 12:24:05 24 MR. BRAUTIGAM: I'm referring to  
 12:24:06 25 the OHSL directors.

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12:24:07 1 MR. MOORE: I'll object.  
 12:24:08 2 MR. BURKE: Object to form. I  
 12:24:09 3 have no idea what we're asking now. You may  
 12:24:13 4 answer, Howard.  
 12:24:13 5 BY MR. BRAUTIGAM:  
 12:24:14 6 Q. Mr. Zoellner, is the question  
 12:24:15 7 clear?  
 12:24:16 8 A. No. I don't know what you're  
 12:24:17 9 referring to.  
 12:24:18 10 Q. Okay. Let me withdraw that  
 12:24:19 11 question and ask you a different question. You  
 12:24:21 12 mentioned something in your previous answer  
 12:24:23 13 about a majority of the Board of Directors. Do  
 12:24:25 14 you remember that testimony?  
 12:24:26 15 A. Yes. I just said the --  
 12:24:28 16 Q. Okay.  
 12:24:28 17 A. Because anything we did was  
 12:24:31 18 majority rule, you know.  
 12:24:35 19 Q. Okay. Do you believe that a  
 12:24:36 20 majority of the Board of Directors approved the  
 12:24:39 21 Oak Hills-Provident merger?  
 12:24:43 22 MR. BURKE: Objection to form.  
 12:24:44 23 A. Well, it's all according to the  
 12:24:46 24 date again.  
 12:24:47 25 Q. Okay.

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12:26:44 1 MR. BURKE: Objection. I don't  
 12:26:45 2 see the words pooling of interest accounting.  
 12:27:04 3 A. I do not know what they mean by  
 12:27:07 4 that sentence there. Honestly I don't.  
 12:27:09 5 Q. All right. Aside from the  
 12:27:11 6 document -- putting the document aside for a  
 12:27:12 7 moment.  
 12:27:13 8 A. All right.  
 12:27:13 9 Q. Are you familiar with the phrase  
 12:27:14 10 pooling of interest accounting treatment?  
 12:27:16 11 A. No.  
 12:27:17 12 MR. BURKE: Objection to  
 12:27:17 13 relevance. You may answer.  
 12:27:19 14 A. Not at the present time. I don't  
 12:27:21 15 remember anything about that.  
 12:27:25 16 Q. Was some understanding of pooling  
 12:27:28 17 of interest accounting versus some other  
 12:27:30 18 accounting treatment necessary to understand  
 12:27:33 19 this proposed merger?  
 12:27:35 20 A. No, I'm -- I'm not familiar with  
 12:27:42 21 it, I'm sorry.  
 12:27:42 22 Q. Are you familiar with a change of  
 12:27:44 23 control contract, sometimes known as a golden  
 12:27:46 24 parachute?  
 12:27:48 25 MR. BURKE: Objection to

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12:24:48 1 A. Well, maybe at the early stages it  
 12:24:49 2 wasn't, but there was --  
 12:24:54 3 Q. Okay. Let's take a look at  
 12:24:56 4 Zoellner 12. Zoellner Deposition Exhibit 12 is  
 12:25:32 5 the minutes of the May 18th, 1999 special  
 12:25:34 6 meeting of the Board of Directors of the OHSL  
 12:25:36 7 Financial Corporation, correct?  
 12:25:37 8 A. Correct.  
 12:25:38 9 Q. And you were at that meeting,  
 12:25:39 10 correct?  
 12:25:40 11 A. Please?  
 12:25:40 12 Q. And you were at that meeting,  
 12:25:42 13 correct?  
 12:25:42 14 A. Yes.  
 12:25:42 15 Q. And pooling of interest accounting  
 12:25:45 16 was discussed, correct?  
 12:25:50 17 A. The pooling of interest? I, I did  
 12:26:10 18 not understand the question.  
 12:26:11 19 Q. Okay. Was pooling of interest  
 12:26:12 20 accounting treatment discussed at this meeting?  
 12:26:15 21 I believe it's referenced in the third  
 12:26:17 22 paragraph.  
 12:26:38 23 A. I do not understand.  
 12:26:40 24 Q. You do not understand pooling of  
 12:26:42 25 interest accounting?

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12:27:48 1 relevance.  
 12:27:49 2 A. No, I --  
 12:27:50 3 MR. BURKE: Assumes facts not in  
 12:27:51 4 evidence. You can answer.  
 12:27:53 5 A. I'm not familiar with that,  
 12:27:54 6 either.  
 12:28:08 7 Q. Did Mr. Hanauer get any money if  
 12:28:11 8 the company was sold in 1999?  
 12:28:13 9 MR. BURKE: Objection.  
 12:28:14 10 Foundation. Assumes facts not in evidence.  
 12:28:16 11 A. Did Ken Hanauer get any money?  
 12:28:31 12 You're referring to a merger of Provident and  
 12:28:37 13 they had -- gave us an agreement on the  
 12:28:41 14 employees, and Ken Hanauer was an employee,  
 12:28:45 15 that if they didn't get a job with Provident  
 12:28:49 16 they got some amount of cash.  
 12:28:52 17 Q. Right.  
 12:28:53 18 A. Yeah.  
 12:28:54 19 Q. And how much cash did Mr. Hanauer  
 12:28:56 20 get?  
 12:28:57 21 A. Gee, I don't know. I don't know.  
 12:28:59 22 Q. Was it \$375,000?  
 12:29:03 23 MR. BURKE: Objection. Asked and  
 12:29:04 24 answered.  
 12:29:04 25 A. I do not know the amount that he

12:29:06 1 got.  
 12:29:06 2 Q. Was it somehow related to his  
 12:29:08 3 salary?  
 12:29:09 4 A. I think it was.  
 12:29:11 5 Q. Was it two and a half years of his  
 12:29:13 6 salary?  
 12:29:19 7 A. I don't know. I don't remember  
 12:29:20 8 that.  
 12:29:22 9 Q. Was it important in your mind to  
 12:29:26 10 include this information in the proxy  
 12:29:28 11 materials?  
 12:29:29 12 MR. BURKE: What information?  
 12:29:30 13 Objection to form. I don't understand what --  
 12:29:32 14 it's vague.  
 12:29:35 15 A. No, I --  
 12:29:38 16 Q. Why not?  
 12:29:40 17 A. Well, that was -- that was part of  
 12:29:42 18 the agreement between Provident and the  
 12:29:43 19 employees.  
 12:29:47 20 Q. Did all former OHSL employees have  
 12:29:50 21 some type of an agreement with Provident that  
 12:29:53 22 they would receive some amount of cash?  
 12:29:55 23 MR. BURKE: Objection, foundation.  
 12:29:56 24 You may answer.  
 12:29:59 25 A. It, it had to do with whether they

12:30:01 1 hired them or not and whether they were  
 12:30:03 2 separated. I don't know the details, but there  
 12:30:05 3 was some arrangements for -- with all of the  
 12:30:08 4 employees, if they did not take the position or  
 12:30:12 5 something, that they got a separation amount.  
 12:30:16 6 To what extent, I do not remember, if I ever  
 12:30:19 7 knew.  
 12:30:19 8 Q. Were you concerned about Oak Hills  
 12:30:20 9 employees --  
 12:30:21 10 A. Absolutely.  
 12:30:22 11 Q. -- in 1999?  
 12:30:23 12 A. Absolutely.  
 12:30:24 13 Q. And why were you concerned?  
 12:30:25 14 A. Because they were good employees  
 12:30:26 15 and we wanted to make sure they were taken care  
 12:30:30 16 of.  
 12:30:30 17 Q. Were you able to make sure that  
 12:30:31 18 the employees were taken care of?  
 12:30:33 19 A. Yeah. It was part of the  
 12:30:34 20 agreement.  
 12:30:35 21 Q. What was the agreement with  
 12:30:37 22 respect to this particular part?  
 12:30:40 23 A. I do not remember what the  
 12:30:42 24 employees' agreement was.  
 12:30:45 25 Q. Well, was every former Oak Hills

12:30:49 1 employee taken care of, in your words?  
 12:30:52 2 A. I cannot say that for sure, but I  
 12:30:53 3 think they were.  
 12:30:55 4 Q. Okay. And what's the basis for  
 12:31:00 5 that statement?  
 12:31:01 6 A. Because I think I heard at one  
 12:31:03 7 time that they were going to do it, at one of  
 12:31:05 8 the meetings we had.  
 12:31:06 9 Q. Going to do what? I didn't mean  
 12:31:08 10 to interrupt you.  
 12:31:09 11 A. To take care of. The employees  
 12:31:10 12 were either going to get a separation -- I  
 12:31:14 13 don't know the details on it, but there was  
 12:31:17 14 something to --  
 12:31:19 15 Q. Okay.  
 12:31:19 16 A. -- to make sure the employees got,  
 12:31:22 17 got taken care, they weren't just put out on  
 12:31:26 18 the street.  
 12:31:27 19 Q. And can you define "taken care of"  
 12:31:28 20 as you used it in your previous answer?  
 12:31:31 21 MR. BURKE: Objection. Asked and  
 12:31:32 22 answered.  
 12:31:32 23 A. That they did have some income.  
 12:31:35 24 Q. Are you finished?  
 12:31:36 25 A. Yes.

12:31:37 1 Q. For how long?  
 12:31:37 2 A. I do not know.  
 12:31:40 3 Q. Okay.  
 12:31:40 4 A. I do not know.  
 12:31:41 5 Q. Would it be fair to say that on or  
 12:31:43 6 about May 18th, 1999, the Board of Directors  
 12:31:47 7 was still split with you, Mr. Herron and Mr.  
 12:31:54 8 Hanauer being against continued negotiations to  
 12:31:57 9 find a buyer, and the other directors being in  
 12:32:00 10 favor of continued negotiations, except for Mr.  
 12:32:04 11 Brinker, whose position was unclear?  
 12:32:07 12 MR. BURKE: Objection. Asked and  
 12:32:08 13 answered. Mischaracterizes the prior record,  
 12:32:10 14 and I believe -- there was one other. I forget  
 12:32:13 15 it. That should be enough for right now.  
 12:32:16 16 Calls for speculation.  
 12:32:33 17 Q. Can you answer the question,  
 12:32:34 18 please?  
 12:32:35 19 A. Oh, I'm sorry. I didn't hear you  
 12:32:36 20 say it.  
 12:32:37 21 MR. BURKE: I'm sorry. Go ahead  
 12:32:39 22 and answer it if I don't tell you not to.  
 12:32:41 23 A. Now I forgot what --  
 12:32:43 24 MR. BURKE: If I don't tell you  
 12:32:43 25 not to answer, Howard, go ahead and answer.

12:32:46 1 Q. Let me ask the question again.  
 12:32:48 2 A. What was the question again? I  
 12:32:49 3 forgot it.  
 12:32:49 4 Q. May 18th, 1999.  
 12:32:51 5 A. Yeah.  
 12:32:52 6 Q. There's a special meeting of the  
 12:32:58 7 Board of Directors. And my question is, was  
 12:32:58 8 the Board still split at that point?  
 12:33:00 9 A. Well, the minutes are -- I don't  
 12:33:00 10 know whether they were or not, because it  
 12:33:03 11 doesn't show any vote taken and how it was  
 12:33:07 12 voted. Usually it's always recorded and this  
 12:33:10 13 doesn't show it. And I do not remember what  
 12:33:13 14 happened on May 18th.  
 12:33:15 15 Q. Okay. Let's go on to the next  
 12:33:16 16 exhibit, Zoellner 13. Okay. Mr. Zoellner,  
 12:33:32 17 have you seen Zoellner Deposition Exhibit 13  
 12:33:35 18 before?  
 12:33:35 19 A. Yes. The minutes show that I was  
 12:33:36 20 there, so I have seen it.  
 12:33:51 21 Q. Okay. What was the role of  
 12:33:52 22 McDonald Investments, Inc. with respect to this  
 12:33:55 23 proposed transaction?  
 12:33:56 24 MR. BURKE: Objection. Asked and  
 12:33:57 25 answered.

12:35:05 1 A. In shreds in the trash.  
 12:35:10 2 Q. Okay. Did you review the book  
 12:35:11 3 prepared by McDonald?  
 12:35:13 4 A. At the time, yes, we discussed a  
 12:35:15 5 number of -- at one of the Board meetings.  
 12:35:20 6 Q. Okay. Was it the May 25th, 1999  
 12:35:23 7 special meeting?  
 12:35:24 8 A. I do not know. It doesn't say in  
 12:35:26 9 there and I can't remember what was discussed  
 12:35:29 10 on May the 25th.  
 12:35:32 11 Q. Can I direct your attention to the  
 12:35:34 12 third paragraph? The purpose of the meeting  
 12:35:36 13 was to have McDonald Investments, Inc. review  
 12:35:38 14 the evaluation book they prepared.  
 12:35:41 15 A. Um-hmm, okay.  
 12:35:42 16 Q. Does that refresh your  
 12:35:43 17 recollection?  
 12:35:43 18 A. Yes. So they did review it with  
 12:35:45 19 us, I think.  
 12:35:45 20 Q. Okay.  
 12:35:47 21 A. It shows it in the minutes.  
 12:35:49 22 Q. Who reviewed this book with you?  
 12:35:51 23 A. Charles Crowley, I guess they  
 12:35:53 24 pronounce it.  
 12:35:55 25 Q. And did you form an opinion of Mr.

12:34:01 1 A. They were guiding us through the  
 12:34:03 2 merger, if it would take place. That's about  
 12:34:13 3 the extent of theirs.  
 12:34:15 4 Q. Okay. Now, on or about May 25th,  
 12:34:17 5 1999, there was no merger, correct?  
 12:34:19 6 A. No, there was none at that time.  
 12:34:21 7 Q. And McDonald Investments had  
 12:34:25 8 prepared some type of a book, correct?  
 12:34:27 9 A. Yeah. They were giving us some  
 12:34:29 10 kind of a -- always giving us information on  
 12:34:31 11 what would happen if this happened or what we  
 12:34:34 12 could do or couldn't do. They were a kind of  
 12:34:39 13 information for the Board.  
 12:34:44 14 Q. And did you review this  
 12:34:45 15 information?  
 12:34:46 16 A. Yes, we did.  
 12:34:48 17 Q. Did you review it?  
 12:34:50 18 A. I think so.  
 12:34:51 19 Q. And did you take this book home  
 12:34:52 20 with you?  
 12:34:56 21 A. Gee, I don't remember.  
 12:34:57 22 Q. Well, you received the book from  
 12:35:00 23 McDonald, correct?  
 12:35:02 24 A. I think we -- yes, I think we --  
 12:35:04 25 Q. And where is this book now?

12:35:56 1 Crowley with respect to this review of the  
 12:36:00 2 book?  
 12:36:03 3 MR. BURKE: Objection to form.  
 12:36:05 4 A. I don't know why I wouldn't -- or  
 12:36:11 5 whether there's a reason to judge him, whether  
 12:36:14 6 he's good or bad.  
 12:36:15 7 Q. Well, was Mr. Crowley in favor of  
 12:36:19 8 some type of a merger for Oak Hills?  
 12:36:22 9 MR. BURKE: Objection, foundation.  
 12:36:23 10 A. I feel like it was just giving us  
 12:36:25 11 information at that time.  
 12:36:26 12 Q. Well, how was McDonald to be paid  
 12:36:29 13 with respect to this transaction?  
 12:36:31 14 MR. BURKE: Objection.  
 12:36:31 15 A. I can't tell that exactly. Well,  
 12:36:35 16 I think it was some kind of commission deal,  
 12:36:38 17 percentage or something. I don't know how it  
 12:36:41 18 was really, but he did get paid, but I don't  
 12:36:45 19 remember the details of it.  
 12:36:47 20 Q. Would it be fair to say that  
 12:36:48 21 McDonald Investments got paid substantially  
 12:36:52 22 more if they sold the company?  
 12:36:54 23 MR. BURKE: Objection. Calls for  
 12:36:55 24 speculation.  
 12:36:55 25 A. No, no, it wasn't. They didn't



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12:36:58 1 decide as far as whether we'd sell or not.  
 12:37:03 2 Q. No. Actually, Mr. Zoellner, my  
 12:37:06 3 question had to do with McDonald's  
 12:37:08 4 compensation.  
 12:37:09 5 A. Yeah, I --  
 12:37:10 6 Q. Do you have something to add?  
 12:37:12 7 MR. BURKE: Listen to his  
 12:37:13 8 question.  
 12:37:13 9 A. All right.  
 12:37:14 10 Q. Did McDonald Investments get paid  
 12:37:16 11 substantially more if Oak Hills was sold?  
 12:37:19 12 MR. BURKE: Objection. Calls for  
 12:37:20 13 speculation. You may answer.  
 12:37:22 14 A. Well, anything they got paid would  
 12:37:24 15 be more, because I, I don't know whether there  
 12:37:29 16 was anything at this point -- whether they were  
 12:37:30 17 getting paid at all. They were just giving us  
 12:37:33 18 information, so they would get paid more if  
 12:37:36 19 they did do all of the work of merging the two  
 12:37:39 20 companies.  
 12:37:41 21 Q. And if the Board or the  
 12:37:44 22 shareholders decided not to merge, McDonald &  
 12:37:48 23 Company wouldn't do very well financially,  
 12:37:49 24 correct?  
 12:37:50 25 MR. BURKE: Objection. Calls for

12:37:52 1 speculation. You may answer.  
 12:37:53 2 A. I can't answer that, I don't know.  
 12:37:57 3 Q. Didn't the Board engage in a  
 12:37:58 4 contract between OHSL and McDonald Investments?  
 12:38:07 5 A. I don't remember. I don't  
 12:38:09 6 remember.  
 12:38:10 7 Q. Do you believe that McDonald  
 12:38:11 8 Investments had some type of an incentive to  
 12:38:14 9 sell the company?  
 12:38:15 10 MR. BURKE: Objection to  
 12:38:19 11 relevance, vague, form.  
 12:38:23 12 A. I have no way of saying yes or no,  
 12:38:26 13 but anybody that's in business wants to sell  
 12:38:28 14 something so they get paid something, but I  
 12:38:38 15 don't know what the agreement was with them,  
 12:38:41 16 with McDonald.  
 12:38:53 17 Q. Please take a look at Zoellner  
 12:38:55 18 Deposition Exhibit 14. This reflects the  
 12:39:15 19 regular meeting of OHSL Financial Corporation  
 12:39:19 20 on or about May 27th, 1999, correct?  
 12:39:23 21 A. Right.  
 12:39:23 22 Q. And you were present at this  
 12:39:24 23 meeting, correct?  
 12:39:29 24 A. Yes.  
 12:39:29 25 Q. And what was the feeling of the

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12:39:29 1 Board with respect to continued merger  
 12:39:29 2 negotiations with some merger partner?  
 12:39:35 3 MR. BURKE: At this date?  
 12:39:36 4 Q. Yes.  
 12:39:37 5 MR. BURKE: Objection to form,  
 12:39:39 6 calls for speculation. You may answer.  
 12:40:34 7 A. What was the question?  
 12:40:36 8 Q. What was the feeling of the Board  
 12:40:38 9 with respect to a proposed merger on or about  
 12:40:40 10 May 27th, 1999?  
 12:40:46 11 A. I was looking for that in here and  
 12:40:48 12 don't see, see anything in here. I don't  
 12:40:50 13 recall what the -- I don't see it in here, so I  
 12:40:56 14 don't know what their feeling -- the Board's  
 12:40:59 15 feeling was.  
 12:41:00 16 Q. Would it be fair -- well, what was  
 12:41:01 17 your feeling on or about May 27th?  
 12:41:03 18 A. I can't tell that, either. It  
 12:41:05 19 should show in here.  
 12:41:08 20 Q. Okay. On page two it says that  
 12:41:09 21 you made a motion --  
 12:41:12 22 A. Seconded by Joe Tenover.  
 12:41:14 23 Q. Right. With respect to the  
 12:41:14 24 payment of the company's 24th consecutive  
 12:41:17 25 quarterly cash dividends. Do you remember

12:41:20 1 doing that?  
 12:41:21 2 A. Yes.  
 12:41:21 3 Q. And that was a good thing for Oak  
 12:41:22 4 Hills, correct?  
 12:41:23 5 A. Yes.  
 12:41:23 6 Q. And as of May 27th, 1999, Oak  
 12:41:26 7 Hills was doing well, correct?  
 12:41:28 8 A. Yes. In my opinion.  
 12:41:29 9 Q. Right. It was financially strong,  
 12:41:30 10 correct?  
 12:41:32 11 A. In my opinion.  
 12:41:32 12 Q. Now, were shareholders clamoring  
 12:41:34 13 for the company to be sold at this point?  
 12:41:37 14 MR. BURKE: Objection to form.  
 12:41:37 15 A. I don't know.  
 12:41:38 16 Q. Did a shareholder ever come up to  
 12:41:40 17 you and say, hey, Mr. Zoellner, I'd like you to  
 12:41:44 18 sell the company?  
 12:41:45 19 A. No. I've never had them come up  
 12:41:47 20 to me and ask me.  
 12:41:48 21 Q. And that's true for the entire  
 12:41:49 22 time Oak Hills was a public company, correct?  
 12:41:54 23 MR. BURKE: Objection to form.  
 12:42:02 24 A. I can't think of anybody that  
 12:42:05 25 wanted me to sell it. If there was anybody --



12:42:08 1 if there was anybody, I don't remember.  
 12:42:13 2 Q. And this is what, six weeks after  
 12:42:16 3 the annual meeting of shareholders on April the  
 12:42:20 4 15th of 1999? This is May 27th, 1999, correct?  
 12:42:25 5 A. Yes.  
 12:42:26 6 MR. BURKE: Objection.  
 12:42:26 7 Q. And you didn't tell the  
 12:42:27 8 shareholders at the annual meeting that, hey,  
 12:42:29 9 the Board is seriously considering selling the  
 12:42:31 10 company, correct?  
 12:42:32 11 MR. BURKE: Objection.  
 12:42:33 12 Mischaracterizes the record. You may answer.  
 12:42:37 13 A. I don't know -- the timing of all  
 12:42:41 14 of this is difficult for me, whether it was  
 12:42:43 15 before or afterward.  
 12:42:45 16 Q. Before or after what?  
 12:42:47 17 A. The meeting that we --  
 12:42:52 18 Q. Well, Mr. Zoellner, let me see if  
 12:42:54 19 I can help you. The annual meeting took place  
 12:42:58 20 on or about April 15th, 1999, correct?  
 12:43:00 21 A. Yes.  
 12:43:01 22 Q. So this meeting, May 27th, is  
 12:43:02 23 approximately six weeks after, correct?  
 12:43:04 24 A. After, yes.  
 12:43:06 25 Q. So my question is -- I think I'm

12:43:07 1 okay on the calendar. My question is, you  
 12:43:10 2 didn't tell the shareholders at the annual  
 12:43:12 3 meeting on April 15th, 1999, that the Board was  
 12:43:16 4 seriously considering selling the company,  
 12:43:18 5 correct?  
 12:43:20 6 MR. BURKE: Objection.  
 12:43:20 7 Mischaracterizes the record. Mischaracterizes  
 12:43:24 8 the record as to when that decision was made.  
 12:43:27 9 We've just gone through the minutes.  
 12:43:32 10 A. I don't know. We did talk about  
 12:43:34 11 when it was. Wasn't it in December or  
 12:43:37 12 something that a decision was made? These --  
 12:43:40 13 I don't know. We went through that, I thought,  
 12:43:44 14 on the minutes.  
 12:43:46 15 Q. Mr. Zoellner?  
 12:43:48 16 A. Yes.  
 12:43:48 17 Q. Was the OHSL Board seriously  
 12:43:51 18 considering selling the company on or about  
 12:43:54 19 April 15th, 1999?  
 12:43:57 20 MR. BURKE: Objection. The  
 12:43:59 21 documents speak for themselves. You may  
 12:44:00 22 answer.  
 12:44:01 23 A. I do not know. I'd have to find  
 12:44:03 24 in the minutes where we did this or that.  
 12:44:07 25 Q. Okay. Was the OHSL Board

12:44:09 1 seriously considering selling the company on or  
 12:44:11 2 about May 27th, 1999?  
 12:44:13 3 A. I do not know.  
 12:44:15 4 Q. Okay. When did the OHSL Board  
 12:44:17 5 seriously consider selling the company?  
 12:44:19 6 A. I do not know. I'd have to get  
 12:44:20 7 the minutes. It should show it in the minutes.  
 12:44:23 8 Q. What would you look for in the  
 12:44:24 9 minutes?  
 12:44:25 10 A. When the motion was made that we  
 12:44:26 11 sell.  
 12:44:28 12 Q. Didn't you seriously consider  
 12:44:30 13 selling before the motion that was made to  
 12:44:32 14 sell?  
 12:44:34 15 A. I do not know of -- I -- me  
 12:44:36 16 personally or the -- all the directors? I do  
 12:44:40 17 not know.  
 12:44:46 18 Q. Please take a look at Zoellner  
 12:44:50 19 Deposition Exhibit 15. Okay. Mr. Zoellner,  
 12:45:14 20 have you seen these minutes before?  
 12:45:17 21 A. I wasn't there. My name isn't on  
 12:45:21 22 there.  
 12:45:21 23 Q. That wasn't my question, Mr.  
 12:45:23 24 Zoellner.  
 12:45:23 25 A. So I've, I -- I am not sure

12:45:27 1 whether I saw these or not. If they gave them  
 12:45:29 2 to me later, I would have.  
 12:45:31 3 Q. Was it --  
 12:45:33 4 A. But I don't know.  
 12:45:33 5 Q. Was it the practice of the OHSL  
 12:45:35 6 Board to give the directors the minutes later?  
 12:45:38 7 A. Yes. If you missed a meeting,  
 12:45:40 8 they would normally.  
 12:45:41 9 Q. Okay. So do you have reason to  
 12:45:42 10 believe that you saw these June 1st, 1999  
 12:45:46 11 minutes?  
 12:45:47 12 A. I would say so.  
 12:45:48 13 Q. Okay. Why do you -- did you miss  
 12:45:51 14 this meeting?  
 12:45:54 15 A. I don't know. I'd have to -- it  
 12:45:57 16 was maybe the four-way bypass I had on my heart  
 12:46:00 17 that I missed. That was sometime around that  
 12:46:07 18 time, so I don't know. Probably sickness of  
 12:46:07 19 some sort.  
 12:46:08 20 Q. Okay. Were these minutes  
 12:46:09 21 discussed at the next meeting?  
 12:46:12 22 A. I'd have to look at the next  
 12:46:15 23 meeting to see if I was there.  
 12:46:17 24 Q. Okay. Do you see in the fourth  
 12:46:17 25 paragraph, the last sentence, it says motion

12:46:21 1 carried. Do you see that?

12:46:26 2 A. One, two, three, four. Motion was

12:46:28 3 made by Joe Tenover, seconded by McKiernan,

12:46:33 4 confidential memorandum to express interest --

12:46:49 5 what was the question again?

12:46:51 6 Q. The last sentence in the fourth

12:46:52 7 paragraph says motion carried, correct?

12:46:55 8 A. Motion carried.

12:46:56 9 Q. And does that imply to you that

12:46:58 10 the motion was not unanimously approved?

12:47:00 11 MR. BURKE: Objection. Calls for

12:47:01 12 speculation. You may answer.

12:47:02 13 A. Well, it shows that I wasn't there

12:47:04 14 so I couldn't have voted. So it wouldn't be

12:47:08 15 unanimous because I wasn't there.

12:47:10 16 Q. Because if you're not at a

12:47:12 17 meeting, you can't vote, correct?

12:47:14 18 A. That is true.

12:47:15 19 Q. And a unanimous vote couldn't

12:47:17 20 possibly take place if all of the directors

12:47:20 21 were not present, correct?

12:47:22 22 MR. BURKE: Objection. Calls for

12:47:22 23 speculation. You may answer.

12:47:27 24 A. That, that's right. If I wasn't

12:47:29 25 there, I couldn't vote.

12:48:23 1 A. Okay.

12:48:24 2 Q. My question is as a freestanding

12:48:25 3 question --

12:48:26 4 A. Okay.

12:48:26 5 Q. -- unrelated to these minutes.

12:48:28 6 A. All right.

12:48:28 7 Q. The way the OHSL Board functioned,

12:48:31 8 you have a unanimous vote, correct? And that

12:48:33 9 was -- I'm talking generally, I'm not talking

12:48:36 10 about any one specific vote. That means all of

12:48:38 11 the directors are present and they all vote one

12:48:40 12 way, they all vote in favor or they all vote

12:48:43 13 against. That's a unanimous vote, correct?

12:48:45 14 MR. BURKE: Objection. Objection

12:48:46 15 to form. Calls for speculation. Asked and

12:48:49 16 answered. You may answer again.

12:48:50 17 A. Well, if you're talking about the

12:48:52 18 definition of "unanimous," if they're referring

12:48:55 19 to all of those present at the meeting, it

12:48:57 20 could be, but if they're referring to all

12:48:59 21 directors, then it wouldn't be. Do you follow

12:49:03 22 me?

12:49:05 23 Q. Okay. So --

12:49:06 24 A. If they were saying it was a

12:49:08 25 unanimous vote by all directors present, then

12:47:32 1 MR. BRAUTIGAM: Could you answer

12:47:33 2 my question, please? Lee Ann will read it

12:47:36 3 back.

12:47:36 4 (Record read by Reporter.)

12:47:47 5 MR. BURKE: Objection. Calls for

12:47:48 6 speculation.

12:47:48 7 A. That is true.

12:47:49 8 Q. And a unanimous vote could not

12:47:50 9 take place if all of the directors --

12:47:53 10 A. Were not present.

12:47:55 11 Q. And if all of the directors who

12:47:56 12 were present didn't vote, correct?

12:47:59 13 MR. BURKE: Objection. Calls for

12:47:59 14 speculation.

12:48:04 15 Q. Correct?

12:48:05 16 A. If they're not there.

12:48:06 17 Q. No. If they are there but they

12:48:07 18 don't vote, you can't say that it's a unanimous

12:48:10 19 vote, correct?

12:48:11 20 MR. BURKE: Objection. Calls for

12:48:12 21 speculation.

12:48:13 22 A. Well, this -- this doesn't say

12:48:15 23 anything about if they voted -- all voted or

12:48:17 24 didn't vote, so I don't know.

12:48:21 25 Q. We're not there yet, Mr. Zoellner.

12:49:12 1 it would be.

12:49:13 2 Q. Okay. But all of the officers

12:49:15 3 present -- excuse me, all of the directors

12:49:17 4 present --

12:49:17 5 A. Directors present.

12:49:18 6 Q. -- would have to vote, right?

12:49:19 7 A. Yes.

12:49:20 8 Q. You couldn't abstain, correct?

12:49:23 9 A. That's right.

12:49:25 10 Q. Okay, great. Now, you'd been on

12:49:26 11 the Board the entire time Oak Hills was a

12:49:28 12 public company, correct?

12:49:29 13 A. That is true.

12:49:30 14 Q. And you're familiar with the way

12:49:31 15 the minutes were written, correct?

12:49:34 16 A. That's true.

12:49:35 17 Q. And would it be fair to say that

12:49:36 18 you're able to interpret OHSL Board minutes

12:49:40 19 even if you didn't attend the meeting, correct?

12:49:43 20 MR. BURKE: Objection.

12:49:43 21 A. Well, not all of them. There's a

12:49:45 22 couple of them here today that I had trouble

12:49:48 23 interpreting.

12:49:48 24 Q. Okay. Well, let's --

12:49:53 25 A. Don't remember what they were,

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12:49:53 1 but --

12:49:54 2 Q. Put these two exhibits side by

12:49:56 3 side.

12:49:56 4 A. Okay.

12:49:57 5 Q. This is Zoellner 14 and Zoellner

12:49:59 6 15. Do you see MUC in Zoellner 14?

12:50:02 7 A. Yes.

12:50:02 8 Q. And that means motion unanimously

12:50:04 9 carried, correct?

12:50:05 10 MR. BURKE: Objection. Calls for

12:50:06 11 speculation.

12:50:07 12 A. I guess it does. At least the

12:50:09 13 letters show it. I do not know.

12:50:12 14 Q. Mr. Zoellner, are you saying that

12:50:14 15 you do not know how to interpret MUC in the

12:50:19 16 Board minutes of OHSL Financial Corporation?

12:50:23 17 MR. BURKE: Objection. Asked and

12:50:23 18 answered. You may answer again.

12:51:06 19 A. That is saying they all passed by

12:51:08 20 unanimous consent, right?

12:51:10 21 MR. BURKE: No, no. His question

12:51:11 22 is -- read the question back.

12:51:11 23 (Record read by Reporter.)

12:51:24 24 MR. BURKE: Do you understand the

12:51:25 25 question? Do you know what that means?

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12:52:32 1 that.

12:52:34 2 A. Yes, they're different.

12:52:36 3 Q. Okay. Do you believe that when it

12:52:37 4 says MUC -- excuse me, motion carried in

12:52:42 5 Zoellner 15, that that implies that the motion

12:52:46 6 passed by a vote was not unanimous?

12:52:49 7 MR. BURKE: Objection. Calls for

12:52:50 8 speculation. You may answer if you know.

12:52:57 9 A. No, it doesn't necessarily mean

12:52:58 10 that it's unanimous. Motion carried does not

12:53:02 11 mean that it's unanimous.

12:53:04 12 Q. In fact, it specifically means

12:53:06 13 it's not unanimous, correct?

12:53:08 14 MR. BURKE: Objection. Calls for

12:53:10 15 speculation. You may answer.

12:53:15 16 A. That doesn't necessarily mean

12:53:16 17 either one. It doesn't mean that it

12:53:19 18 unanimously carried or that the majority -- it

12:53:25 19 could be either one, just that it was carried.

12:53:30 20 Q. Wasn't it the practice of OHSL

12:53:33 21 during the entire time it was a public company

12:53:35 22 to write MUC, or motion unanimously carried,

12:53:41 23 when something, in fact, was unanimously

12:53:43 24 approved?

12:53:44 25 MR. BURKE: Objection. Asked and

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12:51:30 1 A. Unanimous consent, right?

12:51:32 2 MR. BURKE: No, no, you're not

12:51:33 3 asking him. He's asking you if you know.

12:51:35 4 A. Oh. Well, yeah, I -- I should

12:51:51 5 know that. Yes -- say yes.

12:51:53 6 Q. Okay. What does MUC mean?

12:51:57 7 MR. BURKE: Objection.

12:51:58 8 A. I guess maybe I don't know.

12:52:01 9 Unanimous consent. I forget what the M stands

12:52:05 10 for.

12:52:06 11 Q. Would it refresh your recollection

12:52:07 12 if I suggested to you that MUC stands for

12:52:11 13 motion unanimously carried?

12:52:13 14 A. Yes.

12:52:13 15 MR. BURKE: Objection. Mr.

12:52:14 16 Zoellner, you do not have to accept the

12:52:16 17 characterizations that he suggests to you. All

12:52:19 18 you have to testify to is what you know. If

12:52:21 19 you know, you know, but you don't have to

12:52:27 20 accept his characterizations or suggestions.

12:52:27 21 A. Okay. I don't know.

12:52:27 22 Q. Okay. Would you agree that MUC,

12:52:29 23 whatever it stands for, is different from

12:52:30 24 motion carried?

12:52:31 25 MR. BURKE: We'll stipulate to

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12:53:45 1 answered. You may answer.

12:53:57 2 A. Now that I'm recalling, I think

12:53:58 3 that Ken did use that quite often, that MUC.

12:54:01 4 Q. And he only used it when it was

12:54:03 5 appropriate, correct?

12:54:04 6 MR. BURKE: Objection.

12:54:04 7 A. I don't know when he used it, why

12:54:06 8 he would use it or why he didn't use it.

12:54:08 9 Q. Mr. Zoellner, are you testifying

12:54:09 10 that you do not know how to interpret OHSL

12:54:13 11 Board minutes?

12:54:14 12 MR. BURKE: Objection.

12:54:14 13 A. No, it -- no, no.

12:54:18 14 Q. You do or do not know how to

12:54:20 15 interpret the Board minutes?

12:54:22 16 MR. BURKE: Objection. Asked and

12:54:23 17 answered. Do you know what the question is?

12:54:45 18 THE WITNESS: No. I -- well, I --

12:54:47 19 MR. BURKE: No, no, do you know

12:54:48 20 what the question is?

12:54:50 21 THE WITNESS: Well, I think I know

12:54:51 22 what it is.

12:54:52 23 MR. BURKE: Okay. Let --

12:54:52 24 BY MR. BRAUTIGAM:

12:54:55 25 Q. Mr. Zoellner, let me ask a new

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12:54:57 1 question. Do you know or do you not know how  
 12:55:00 2 to interpret OHSL Board minutes?  
 12:55:02 3 MR. BURKE: Objection. Asked and  
 12:55:03 4 answered. You may answer.  
 12:55:04 5 Q. I just want some clarity on it.  
 12:55:06 6 A. Yes, I do.  
 12:55:07 7 Q. Okay. How do you interpret MUC?  
 12:55:10 8 MR. BURKE: Objection. Asked and  
 12:55:11 9 answered.  
 12:55:16 10 A. Motion unanimously carried is what  
 12:55:20 11 it --  
 12:55:21 12 Q. Okay. How do you interpret motion  
 12:55:23 13 carried?  
 12:55:24 14 MR. BURKE: Objection. Asked and  
 12:55:24 15 answered.  
 12:55:27 16 A. How would I interpret that? That  
 12:55:29 17 would be the majority voted for it.  
 12:55:32 18 Q. So it would not be a unanimous  
 12:55:34 19 motion?  
 12:55:35 20 A. I don't think it would be.  
 12:55:36 21 Q. Okay. Did you ever inquire as to  
 12:55:38 22 how this vote on June 1st, 1999 shook out, in  
 12:55:43 23 other words, which directors voted which way?  
 12:55:45 24 MR. BURKE: Objection.  
 12:55:46 25 A. No, I never did do that.

12:57:01 1 were you in favor of or against the  
 12:57:03 2 independence of Oak Hills?  
 12:57:04 3 MR. BURKE: Objection.  
 12:57:05 4 Repetitive, cumulative. Asked and answered.  
 12:57:07 5 You may answer.  
 12:57:08 6 A. I'd have to look at the minutes  
 12:57:09 7 where we approved it -- where I voted for it.  
 12:57:15 8 I do not know the date.  
 12:57:18 9 Q. Mr. Zoellner, would it be fair to  
 12:57:20 10 say then that you were against the sale of Oak  
 12:57:23 11 Hills --  
 12:57:23 12 A. No, it's all --  
 12:57:24 13 Q. Can I finish my question?  
 12:57:25 14 A. Oh, I'm sorry.  
 12:57:26 15 Q. You were against the sale of Oak  
 12:57:28 16 Hills at every point in 1999 until the point  
 12:57:30 17 where you voted in favor of the proposed merger  
 12:57:34 18 with Provident?  
 12:57:34 19 MR. BURKE: Objection.  
 12:57:35 20 Mischaracterizes his prior testimony.  
 12:57:38 21 Q. Is that fair?  
 12:57:38 22 MR. BURKE: Objection.  
 12:57:39 23 Mischaracterizes his prior testimony.  
 12:57:40 24 A. No.  
 12:57:42 25 Q. How does that mischaracterize your

12:55:48 1 Q. Why not?  
 12:55:51 2 A. I had no reason to.  
 12:55:53 3 Q. You didn't think it was important  
 12:55:54 4 to learn how your fellow directors voted at a  
 12:55:58 5 meeting you missed?  
 12:56:04 6 MR. BURKE: Objection.  
 12:56:05 7 Argumentative. You may answer.  
 12:56:18 8 A. I don't know. I didn't contact  
 12:56:20 9 them and ask them how they voted, and this  
 12:56:23 10 is -- this is years later. I really don't  
 12:56:26 11 recall.  
 12:56:34 12 Q. Mr. Zoellner, my question was,  
 12:56:36 13 apparently you didn't think it was important to  
 12:56:38 14 contact your fellow directors and find out how  
 12:56:41 15 they voted; is that correct?  
 12:56:42 16 MR. BURKE: Objection.  
 12:56:42 17 Argumentative.  
 12:56:43 18 A. No, I do not know that at this  
 12:56:45 19 time. That's been so long ago, I don't know  
 12:56:48 20 what I thought back then.  
 12:56:49 21 Q. Okay. Why didn't you contact your  
 12:56:51 22 fellow directors?  
 12:56:52 23 A. I don't know. I might have. I  
 12:56:54 24 don't know whether I did or I didn't.  
 12:56:58 25 Q. Okay. On or about June 1st, 1999,

12:57:43 1 prior testimony or your feelings?  
 12:57:45 2 A. I do not know when I changed.  
 12:57:46 3 That's another date that comes up that I do not  
 12:57:50 4 know, whether it was before this or after this.  
 12:57:52 5 MR. BURKE: And by "this" you're  
 12:57:53 6 referring to the minutes of June 1, 1999?  
 12:57:57 7 Q. Okay.  
 12:57:57 8 MR. MOORE: Exhibit 15.  
 12:57:58 9 Q. Okay. Please take a look at  
 12:57:59 10 Exhibit 16. Mr. Zoellner, is Deposition  
 12:58:53 11 Exhibit 16 the minutes of the regular meeting  
 12:58:55 12 of the Board of Directors of OHSL Financial  
 12:58:58 13 Corporation for June 24th, 1999?  
 12:59:02 14 MR. BURKE: Have you completed  
 12:59:02 15 your review of the document, Mr. Zoellner?  
 12:59:04 16 A. I haven't read the whole thing.  
 12:59:10 17 MR. BURKE: Okay. Feel free to  
 12:59:10 18 read it before you answer Mr. Brautigam's  
 12:59:10 19 question.  
 12:59:30 20 A. What was the question?  
 12:59:32 21 Q. Are these the minutes of the June  
 12:59:34 22 24th, 1999 regular meeting of OHSL Financial  
 12:59:38 23 Corporation?  
 12:59:39 24 MR. BURKE: Hang on for one  
 12:59:40 25 second. Your exhibit is incomplete. There are

12:59:42 1 two sides to it. You've only given him a  
 12:59:45 2 one-sided copy. For whatever reason I've got  
 12:59:48 3 both. Do you want to remark the exhibit?  
 13:00:44 4 MR. BRAUTIGAM: Okay.  
 13:00:44 5 MR. BURKE: Do you want to make  
 13:00:45 6 copies so we can share?  
 13:00:45 7 (Brief recess.)  
 13:09:05 8 BY MR. BRAUTIGAM:  
 13:09:05 9 Q. Okay. Mr. Zoellner, have you had  
 13:09:06 10 an opportunity to review Zoellner Deposition  
 13:09:09 11 Exhibit 16?  
 13:09:09 12 A. Yes.  
 13:09:10 13 Q. And this reflects the June 24th,  
 13:09:16 14 1999 regular meeting of the OHSL Board which  
 13:09:19 15 you attended, correct?  
 13:09:20 16 A. Yes.  
 13:09:21 17 Q. And does this refresh your  
 13:09:22 18 recollection with respect to what your position  
 13:09:23 19 was with respect to the continued independence  
 13:09:26 20 of OHSL?  
 13:09:30 21 A. No, I don't think it reflects  
 13:09:31 22 that.  
 13:09:34 23 Q. Okay. Could I direct your  
 13:09:35 24 attention to the second page of the document?  
 13:09:40 25 Are you familiar with the term called Project

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13:10:33 1 A. Yes.  
 13:10:34 2 Q. So was OHSL for sale as of that  
 13:10:37 3 date?  
 13:10:37 4 A. It doesn't say it anywhere that  
 13:10:39 5 day, I don't think, so it isn't.  
 13:10:43 6 Q. It was not for sale as of that  
 13:10:44 7 date?  
 13:10:45 8 MR. BURKE: Objection.  
 13:10:45 9 Mischaracterizes his testimony.  
 13:10:48 10 Q. Mr. Zoellner, did I  
 13:10:49 11 mischaracterize your testimony in any way?  
 13:10:57 12 A. I don't know.  
 13:10:59 13 Q. Okay. Mr. Zoellner, it's a simple  
 13:11:00 14 question. June 24th, 1999 -- are you with me?  
 13:11:04 15 A. I'm with you.  
 13:11:05 16 Q. There's a regular meeting of the  
 13:11:06 17 OHSL Board. Are you with me?  
 13:11:09 18 A. Yes.  
 13:11:10 19 Q. On or about this date, June 24th,  
 13:11:12 20 1999, was OHSL for sale?  
 13:11:16 21 A. I do not know. That doesn't say  
 13:11:19 22 there, so I do not know. The minutes do not  
 13:11:23 23 show that.  
 13:11:25 24 Q. Okay. What was your feeling on  
 13:11:28 25 June 24th, 1999? Did you believe that Oak

13:09:43 1 Tree?  
 13:09:44 2 A. No. I -- I remember hearing it,  
 13:09:49 3 but I can't tell you what it is. I've  
 13:09:52 4 forgotten it.  
 13:09:53 5 Q. Okay. In what context did you  
 13:09:54 6 hear it?  
 13:09:55 7 A. I don't know.  
 13:09:59 8 Q. What had happened with respect to  
 13:10:02 9 the proposed sale of OHSL up to and including  
 13:10:06 10 June 24th, 1999?  
 13:10:10 11 MR. BURKE: Objection. Vague, one  
 13:10:12 12 of --  
 13:10:12 13 A. What things happened?  
 13:10:15 14 Q. Right.  
 13:10:16 15 MR. BURKE: I don't understand the  
 13:10:16 16 question. Objection.  
 13:10:17 17 A. To what?  
 13:10:19 18 Q. Okay. Was OHSL for sale by June  
 13:10:22 19 24th, 1999?  
 13:10:24 20 A. I do not know.  
 13:10:24 21 Q. Who would know?  
 13:10:25 22 A. Those dates I do not know. I'd  
 13:10:27 23 have to refer to the minutes to recall these.  
 13:10:30 24 Q. Okay. You have the June 24th,  
 13:10:31 25 1999 minutes in front of you, correct?

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13:11:31 1 Hills would be best served by continuing  
 13:11:34 2 independence?  
 13:11:34 3 A. I, I cannot answer. I don't know.  
 13:11:37 4 Q. Okay. Did you speak at this  
 13:11:38 5 meeting?  
 13:11:39 6 A. Did I speak at this meeting?  
 13:11:40 7 Q. Yes.  
 13:11:42 8 A. I don't know why I would.  
 13:11:45 9 Q. Okay. Let's take a look at the  
 13:11:46 10 second page of the document, the first full  
 13:11:49 11 paragraph. The first sentence of that  
 13:11:50 12 paragraph is, "a discussion took place with  
 13:11:54 13 regards to Project Tree and the limited number  
 13:11:57 14 of interested parties McDonald Investments has  
 13:12:02 15 been able to attract to the process." Did I  
 13:12:04 16 read that correctly?  
 13:12:05 17 A. Yes.  
 13:12:05 18 Q. Now, you don't know what Project  
 13:12:07 19 Tree is, correct?  
 13:12:08 20 A. No.  
 13:12:08 21 Q. What does it mean when it says  
 13:12:10 22 "limited number of interested parties McDonald  
 13:12:12 23 Investments has been able to attract to the  
 13:12:14 24 process"?  
 13:12:23 25 A. I do not know.



13:12:25 1 Q. Mr. Zoellner, respectfully, how  
13:12:28 2 could you be a Board member and not know  
13:12:29 3 what --

13:12:30 4 A. I don't know. I can't recall  
13:12:31 5 this, this is so far remote. It's been a long  
13:12:38 6 time ago and I can't recall these things.

13:12:41 7 Q. Are you able to interpret these  
13:12:42 8 minutes today?

13:12:44 9 MR. BURKE: Objection. He doesn't  
13:12:45 10 have to interpret the minutes, he has to answer  
13:12:47 11 your questions.

13:12:50 12 A. What was the question?

13:12:51 13 Q. Are you able to interpret these  
13:12:52 14 minutes today?

13:12:54 15 A. To some extent, yes.

13:12:56 16 Q. Okay.

13:12:56 17 A. Offhand I don't remember what  
13:12:57 18 Project Tree was.

13:12:59 19 Q. Okay. Are you able to interpret  
13:13:01 20 what "limited number of interested parties  
13:13:03 21 McDonald Investments has been able to attract  
13:13:06 22 to the process" means?

13:13:13 23 A. No, I don't know what that means.

13:13:16 24 Q. Okay. The next sentence is, "at  
13:13:17 25 meeting time it appeared Fifth Third was not

13:13:20 1 going to respond to the invitation to  
13:13:22 2 participate." What does that mean?

13:13:27 3 A. It appears Fifth Third was not  
13:13:28 4 going to respond to the -- that means they  
13:13:34 5 weren't going to make an offer.

13:13:36 6 Q. Was that good or bad?

13:13:41 7 A. I don't know. It's all according  
13:13:43 8 to what -- your thinking of it.

13:13:48 9 Q. Well, what was your thinking as of  
13:13:50 10 this time?

13:13:52 11 A. Neither way. Was just interested,  
13:13:55 12 whether they made us an offer or not.

13:14:07 13 Q. Mr. Zoellner, I'm not quite sure I  
13:14:08 14 understand your answer. What did you mean when  
13:14:10 15 you said "neither way" in your previous answer?

13:14:13 16 MR. BURKE: You asked him if it  
13:14:14 17 was good or bad. Objection, asked and  
13:14:16 18 answered.

13:14:18 19 A. Well, you had said is it bad or  
13:14:20 20 good that Fifth Third did not answer or respond  
13:14:27 21 to our invitation. And it was -- it was  
13:14:28 22 neither.

13:14:30 23 Q. It was neither good nor bad?

13:14:32 24 A. Good nor bad.

13:14:33 25 Q. Okay.

13:14:33 1 A. It was just information.

13:14:35 2 Q. Okay. Why did you perceive that  
13:14:36 3 as being neither good nor bad?

13:14:48 4 A. I don't think we had voted at this  
13:14:51 5 point to, to sell or merge with anybody, so it  
13:14:56 6 was just information we were gathering, the way  
13:14:58 7 I would interpret this.

13:14:59 8 Q. And what was the purpose of  
13:15:00 9 gathering this information?

13:15:02 10 A. To know whether we should be doing  
13:15:05 11 something or not, whether it's good for the  
13:15:07 12 stockholders or --

13:15:08 13 Q. When you say "doing something or  
13:15:10 14 not," what specifically are you referring to?

13:15:12 15 A. To merge or to sell out.

13:15:20 16 Q. Okay. "McDonald representatives  
13:15:21 17 were still hopeful they could persuade them to  
13:15:25 18 bid." Can you interpret that sentence for me?

13:15:28 19 MR. BURKE: Objection to form.  
13:15:29 20 Objection to relevance. You may answer. Calls  
13:15:31 21 for speculation. You may answer.

13:15:36 22 A. What was that again? I lost my  
13:15:37 23 train of thought.

13:15:38 24 Q. Can you interpret this sentence,  
13:15:40 25 "McDonald representatives were still hopeful

13:15:43 1 they could persuade them to bid?"

13:15:47 2 MR. BURKE: Same objection. You  
13:15:48 3 may answer.

13:15:48 4 A. Well, they were hoping that maybe  
13:15:50 5 they could get a bid out of them, that they  
13:15:52 6 weren't going to give up on them. That's how I  
13:15:55 7 interpreted it.

13:15:56 8 Q. Was it important to you that Fifth  
13:15:58 9 Third submit a bid?

13:16:01 10 MR. BURKE: Objection. Asked and  
13:16:01 11 answered.

13:16:01 12 A. Well, if we want a comparison  
13:16:04 13 we've got to get a bid, otherwise we don't have  
13:16:06 14 a comparison.

13:16:07 15 Q. Did you end up with more than one  
13:16:08 16 bid?

13:16:09 17 A. As it ended up, I think we only  
13:16:11 18 ended up with one bid.

13:16:14 19 Q. Was that a good time to sell the  
13:16:16 20 company, when you had one bid?

13:16:18 21 MR. BURKE: Objection.

13:16:21 22 A. Well, it's a matter if -- it was  
13:16:23 23 the way things would go, if you have one bid  
13:16:33 24 that's going to be higher than all of the  
13:16:35 25 others, then you -- then you had a good one.